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PART I



HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION PART 213—EXCEPTED SERVICE Republication of Amendments

Due to the large number of amendments which have been published to Part 213 of Title 5 of the Code of Federal Regulations, it has been determined that a republication without change would serve to set forth all published amendments in one codified statement. There is no substantive change in the provisions of this part. It is merely republished for the convenience of the users of the FEDERAL REGISTER and the Code of Federal Regulations. Therefore, Part 213 is revised to read as follows:

UNITED STATES CIVIL SERVICE COMMISSION, [SEAL] JAMES C. SPRY, *Executive Assistant to the Commissioners.*

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AUTHORITY: The provisions of this Part 213 issued under 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp. p. 218.

Subpart A—General Provisions

§ 213.101 Definitions.

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Commission under § 6.1 or § 9.20 of the civil service rules (Subchapter A of this chapter).

(b) "Excepted position" means a position in the excepted service.

§ 213.102 Identification of positions in Schedule A, B, or C.

The Commission shall decide whether the duties of any particular position are such that it may be filled as an excepted position under Schedule A, B, or C.

Subpart B—[Reserved]

Subpart C—Excepted Schedules

SCHEDULE A

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is not practicable to examine.

(a) The positions enumerated in §§ 213.3102 to 213.3199 are positions other than those of a confidential or policy-determining character for which it is not practicable to examine and which are excepted from the competitive service and constitute Schedule A.

(b) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position listed in Schedule A for summer or student employment within the United States. This prohibition does not apply to the appointment of persons (1) who are eligible for placement assistance under the Commission's Displaced Employee (DE) Program, (2) who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or (3) who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by the Commission and published in the Federal Personnel Manual.

(c) An agency may appoint for summer employment within the United States in positions listed in Schedule A only in accordance with the terms of the Commission's summer employment program. This restriction does not apply to positions that are excepted only when filled by particular types of individuals.

(d) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school as distinguished from a correspondence student.

§ 213.3102 Entire executive civil service.

(a) Positions of Chaplain and Chaplain's Assistant.

(b) Cooks, except at fixed locations such as hospitals, quarantine stations, and penal institutions.

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment which was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any position the duties of which are part-time or intermittent in which the appointee will receive compensation during his service year that aggregates not more than 40 percent of the annual salary rate for the first step of GS-3. This limitation on compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority shall not be for job employment. In the metropolitan area of Washington, D.C., appointments under this authority shall be subject to the prior approval of the Commission.

(h) Subject to prior approval by the Commission, positions in Federal mental institutions when filled by persons who have been patients of such institutions and been discharged and are certified by the medical head thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of the Commission, positions requiring tempo-

rory, part-time, or intermittent employment in wage board type occupations (i.e., position excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year, and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Subject to approval of the Director of Selective Service, positions for which in the opinion of the Commission a local recruiting shortage exists when filled by individuals performing reconciliation service pursuant to Presidential Proclamation No. 4313 of September 16, 1974. Initial appointments under this authority may not exceed 1 year, and an initial appointment may be extended for one or more periods to a total of not to exceed 1 year. Such appointment may be further extended for one or more periods not to exceed 1 additional year. No person may serve under this authority longer than 2 years. No new appointments may be made under this authority after June 30, 1977.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of the Commission where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (i) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, and Interior, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by the Commission that this authority is applicable, for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis when, in the opinion of the Commission, appointment through competitive examination is impracticable.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employments

under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional, or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Employments under this provision may be continued only so long as the foregoing conditions are met, and the total period of such employment shall not exceed one year in any individual case: *Provided*, That such employment may, with the approval of the Commission, be extended for not to exceed an additional year.

(q) Positions at grade GS-7 and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be: (1) Bona fide high school science or mathematics teachers or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. No person shall be employed under this provision in (i) positions of a routine clerical type or (ii) in excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS-4 and below which are established in connection with associate degree cooperative education programs. Students enrolled in bachelor's degree cooperative education programs as defined in § 213.3202(a) of this Part shall not be employed under this provision. Appointments under this authority may be made only to positions for which qualification standards established under Part 302 of this chapter are consistent with the education and experience standards established for comparable positions in the competitive service.

(r) All positions of a project nature when filled by individuals the salaries for whom are paid out of funds allocated by the President under authority of Pub. L. 87-658, approved September 14, 1962, the Public Works Acceleration Act Employment under this authority shall be for a temporary period not to exceed one year.

(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with written agreements executed between an agency and the Commission. Provisions to be included in such agreements are specified in the Federal Personnel Manual.

(u) Subject to prior approval of the Commission, positions when filled by severely handicapped persons who (1) under temporary appointment, have demonstrated their ability to perform the duties satisfactorily; or (2) are certified by counselors of State Vocational Rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties.

(v) Temporary Summer Aid positions whose duties involve work of a routine nature not regularly covered

under the General Schedule and requiring no specific knowledge or skills, when filled by youths appointed for summer employment under such economic or educational needs standards as the Commission may prescribe. A person may not be appointed unless he has reached his sixteenth but not his twenty-second birthday, or employed for more than 700 hours under this paragraph. This paragraph shall apply only to the positions whose pay is fixed at the equivalent of the highest minimum wage rate established by the Fair Labor Standards Act of 1938, as amended. However, during 1974 an agency shall not fix the pay at a rate less than that paid to Summer Aids by Federal agencies (other than the Postal Service) in the geographic area concerned in 1973.

(w) Part-time or intermittent positions the duties of which involve work of a routine nature when filled by students appointed in furtherance of the President's Youth Opportunity Stay-in-School Campaign and when the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment in a resident secondary school or institution of higher learning, accredited by a recognized accrediting body; (2) employment does not exceed 16 hours in any calendar week (40 hours in any calendar week which falls within a vacation period); (3) while employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer; (4) appointees need the earnings from the employment to continue in school; and (5) salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance. Appointments under this authority may not extend beyond 1 year: *Provided*, That such appointments may be extended for additional periods of not to exceed 1 year each if the conditions for initial appointment are still met. A person may not be appointed under this authority unless he has reached his 16th but not his 22d birthday. No new appointments may be made under this authority between May 1 and August 31, inclusive.

(x) Subject to prior approval of the Commission, positions for which a local recruiting shortage exists when filled by inmates of Federal and District of Columbia penal and correctional institutions under work release programs authorized by the Prisoner Rehabilitation Act of 1965 and the District of Columbia Work Release Act. Initial appointments under this authority may not exceed one year. An initial appointment may be extended for one or more periods not to exceed one additional year each with the prior approval of the Commission upon a finding that the inmate is still in a work release status and that a local recruiting shortage still exists. No person may serve under this authority longer than one year beyond the date he is released from custody.

(y) Positions at grade GS-2 and below for summer employment, as defined in § 213.3101(d), of assistants to scientific,

professional, and technical employees, when filled by finalists in national science contests under hiring programs approved by the Commission.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS-11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program and may be made initially for 1 year only. An agency may extend an appointment made under this authority for up to 1 additional year when the program committee at the laboratory concerned determines that extension will benefit both the associate and the laboratory.

(bb) Subject to prior approval of the Commission, positions when filled by aliens in the absence of qualified citizens.

(cc) Positions at GS-15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd) Positions at the grade GS-12 through GS-15 levels when filled by persons designated as Fellows under the Brookings Institution's Economic Policy Fellowship Program. Appointments made under this authority may not exceed 2 years in duration and no appointment may extend beyond June 30, 1975.

(ee) Positions in research and development facilities when filled for not to exceed 1 year by scientists and engineers appointed under a program of Presidential internships. No new appointments may be made under authority after December 31, 1973.

(ff) Not to exceed 25 positions when filled in accordance with an agreement between the Commission and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91-452 and related statutes. A person appointed under this authority may continue to be employed under it after he ceases to be in a qualifying program only as long as he remains in the same agency without a break in service.

§ 213.3103 Executive Office of the President.

(a) *Office of Science and Technology.* (1) All professional positions on the Staff of the Office.

(b) [Reserved]

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS-13 through 15 on the staff of the Council.

(d) [Reserved]

(e) *Office of Telecommunications Policy.* (1) Professional positions in grades GS-13 through 15 on the staff of the Office.

(2) All positions assigned to the staff of the Domestic Council Committee on

the Right of Privacy in grades GS-7 through GS-15.

(1) *Special Action Office for Drug Abuse Prevention.* (1) After December 1, 1973, all positions on the staff of the Special Action Office for Drug Abuse Prevention not filled in the competitive service or under another authority. No one may serve under this authority after June 30, 1975.

§ 213.3104 Department of State.

(a) *Office of the Secretary.* (1) Six physical science administration officers at GS-14 and above in International Scientific and Technological Affairs.

(2)-(4) [Reserved]

(5) Executive Officer, Executive Secretariat.

(b) [Reserved]

(c) *International Boundary and Water Commission, United States and Mexico.* (1) Gage readers employed part-time or intermittently at isolated localities when, in the opinion of the Commission, appointment through competitive examination is impracticable.

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 130 working days or 6 months within any 1 calendar year.

§ 213.3105 Department of the Treasury.

(a) [Reserved]

(b) *Bureau of Customs.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS-9 and for not more than 130 working days in a service year.

(4) Positions of day "pickup" laborers whose assignments are to intermittent duties of short duration that must be performed without delay in field establishments where hiring of "pickup" laborers is authorized by the Bureau of Customs headquarters. Persons appointed under this authority may not be employed in this kind of work in the Bureau of Customs for more than 180 working days a year under this authority or under a combination of this authority and any other authority for excepted appointment that may be appropriate. This authority is not appropriate for job employment.

(5) Positions at GS-9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his service year. An individual appointed under this exception may not be employed in the Bu-

reau of Customs under a combination of this and any other exception for more than 700 hours in his service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7) [Reserved]

(8) Staff assistant positions established to aid in the reorganization of the Bureau of Customs under Reorganization Plan No. 1 of 1965, when filled by persons with 1 year or more of current service as a Presidential appointee in a key position in the Bureau. No person may be employed under this paragraph in excess of 3 years.

(9) Not to exceed seven positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of Trade, Energy, and Financial Resources Policy Coordination.*

(1) Not to exceed 10 positions at the equivalent of GS-13 through GS-17 to supplement the permanent staff in the study of complex problems relating to international trade and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(d) [Reserved]

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) *Office of the Assistant Secretary for International Affairs.* (1) Not to exceed 10 positions in the Research and Planning Office at the equivalent of GS-13 through GS-17 to supplement the permanent staff in the study of complex problems relating to international financial and economic policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) Thirty positions of investigator for special assignments.

§ 213.3106 Department of Defense.

(a) *Office of the Secretary.* (1) Five Special Advisers in the immediate office of the Secretary or Deputy Secretary with responsibility for studies and recommendations in broad program areas. These positions have advisory rather than operating duties, except as operating or administrative responsibility may be exercised in connection with pilot studies.

(2) Positions assigned exclusively to Communications Intelligence Activities.

(3) Positions assigned to or in support of special classified training activities.

(4) Three Staff Assistants.

(5) Director, Intelligence Resources and Programs, OASD (Administration).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the Department resident in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided*, That (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds the additional employment is in the interest of management.

(7) Positions assigned to all Cryptologic Intelligence Activities/Functions of the Military Departments.

(8) The Dean, Associate Dean, faculty members, and teaching/research assistant positions on the staff of the Uniformed Services University of the Health Sciences.

(c) *Interdepartmental Activities.* (1) Positions in support of National Security Programs and Space Council Activities.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of the Commission, it is impracticable to examine. This authority does not apply to positions assigned to Cryptologic and Communications Intelligence Activities/Functions.

§ 213.3107 Department of the Army.

(a) *General.* (1) Positions the duties of which are of a quasi-military nature and involve the security of secret or confidential matter when, in the opinion of the

Commission, appointment through competitive examination is impractical. This authority does not apply to positions assigned to Cryptologic Intelligence Activities/Functions.

(2) Unskilled laborers and munitions handlers engaged in handling Ordnance materiel, including ammunition, where temporary or intermittent employment is necessary.

(3) Student occupational therapist positions in Army hospitals. Appointments to these positions will not extend beyond the training period applicable to each individual case, which is a minimum of 3 months' training and a maximum of 12 months' training, depending upon the individual's previous clinical training.

(4) [Reserved]

(5) Positions assigned exclusively to Army Communications Intelligence Activities.

(6) Trainee student medical technologist (intern) positions at the Rodriguez Army Hospital, Fort Brooke, Puerto Rico. Appointments to these positions will not extend beyond the training period applicable to each individual case, depending upon the individual's previous clinical training. Employment under this provision may not exceed 1 year in any individual case: *Provided*, That such employment may, with the approval of the Commission, be extended for not to exceed an additional year. This authority shall be applied only to positions whose compensation is fixed in accordance with the provisions of section 3 of Pub. L. 80-330.

(7) [Reserved]

(8) Not to exceed 350 positions of members of treatment and counseling teams and related positions, such as those of ward attendants and occupational therapy assistants, to assist in the implementation of an alcohol and drug abuse prevention and control program, when filled by persons who have a history of alcoholism or drug addiction and who have been successfully treated.

(9) Positions of civilian technicians in an Army Reserve unit designated by the Department to participate in a special CONARC test program, when filled on a temporary basis by members of Reserve components who have military occupational specialties required for test purposes. No appointment may extend beyond September 30, 1974.

(b) *Transportation Corps.* (1) Longshoremen and stevedores employed at ports of embarkation in the United States; and all positions on vessels operated by the Transportation Corps.

(c) *Corps of Engineers.* (1) Land appraisers employed on a temporary basis for a period not to exceed 1 year on special projects where knowledge of local values or conditions or other specialized qualifications not possessed by appraisers regularly employed by the Corps of Engineers are required for successful results.

(2) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) on survey, construction, short-term maintenance,

or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when the Commission has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in Civil Service central office, regional, and branch office cities or in cities where there is a local Board of U.S. Civil Service Examiners to service the employing establishment.

(3) Positions of Academic Director, Department Head, and Instructor at the U.S. Military Academy Preparatory School, Fort Belvoir, Va.

(d) *U.S. Military Academy, West Point, N.Y.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), hostesses, chapel organist and choirmaster, librarian when filled by an officer of the Regular Army retired from active service, and military secretary to the Superintendent when filled by a Military Academy graduate retired as a regular commissioned officer for disability.

(e) *National War College, Washington, D.C.* (1) Civilian directors of studies for employment of not to exceed 1 year: *Provided*, That such employment may, with the prior approval of the Commission, be extended for not to exceed 2 additional years.

(f) *Joint Brazil-United States Defense Commission.* (1) One position of clerk-stenographer-translator or civilian aide requiring a knowledge of English, Portuguese, and Spanish.

(g) *Defense Language Institute.* (1) Positions of instructors whose duties require proficiency in the teaching of a foreign language, and supervisory instructors whose duties require a background in language teaching.

(2) Clerk-Typist positions (except at the English Language School) whose incumbents are required to have a foreign language knowledge and whose duties require rapid and accurate typing of foreign language materials in foreign language script and proofreading of the materials typed.

(3) [Reserved]

(4) Foreign language instructor positions at local Army language training facilities established pursuant to the Defense Language Program.

(5) Positions which require a native proficiency in a given foreign language and whose incumbents serve as foreign language subject matter specialists to assist in the development and evaluation of instructional material and methods directly related to the teaching of foreign languages. Appointments under this authority are made initially for not to exceed 1 year, but may be extended for no more than 1 additional year with the prior approval of the Director, Defense Language Institute.

(h) *Army War College, Carlisle Barracks, Pa.* (1) One position of Educational Specialist for employment of not to exceed 1 year: *Provided*, That such

employment may, with the prior approval of the Commission, be extended for not to exceed 1 additional year.

(i) *Defense Systems Management School, Fort Belvoir, Va.* (1) The Deputy Commandant and professors in grades GS-13 through 15.

§ 213.3108 Department of the Navy.

(a) *General.* (1) Intelligence and counterintelligence positions assigned to Naval Intelligence Activities/Functions, except positions in Cryptologic Intelligence Activities/Functions. Use of this authority outside the Naval Intelligence Command requires prior certification by the Commander, Deputy Commander, or Assistant Deputy Commander that the incumbent will perform duties concerned with the specific function in carrying out assigned responsibilities.

(2) [Reserved]

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351-54.

(5) One Staff Assistant to the Naval Aide to the President.

(6) [Reserved]

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided*, That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351-54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351-54.

(9) One Personnel Security Specialist, Naval Personnel Program Support Activity, Bureau of Naval Personnel.

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351-54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351-54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351-54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351-54. Employment under this authority may not exceed 1 year.

(14) Not to exceed 100 positions of rehabilitation counselors and therapists in grades GS-3 through 11 to assist in the implementation of a drug rehabilitation program when filled by persons who have a history of drug addiction and who have been successfully treated. No new appointments may be made under this authority after July 31, 1973.

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Naval Home.* (1) Positions of orderly when filled by the appointment of beneficiaries of the Home.

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) [Reserved]

(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed 5 positions of Liaison Scientist, GS-13/15, in the office of Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of the Commission, total employment under this authority may be for as long as 3 years.

§ 213.3109 Department of the Air Force.

(a) *Office of the Secretary.* (1) Three Special Assistants in the Office of the Secretary of the Air Force. These positions have advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) [Reserved]

(c) [Reserved]

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, and two Instructors in Music (Choirmasters).

(e) *Air Force Systems Command.* (1) Not to exceed 12 positions of engineer, GS-14-15, at the Aeronautical Systems Division, Wright-Patterson Air Force Base, when filled on a temporary basis by persons serving under an agreement with aerospace contractors. Employment under this authority is limited to 4 years.

§ 213.3110 Department of Justice.

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions of temporary deputy marshals in lieu of bailiff in the U.S. courts when employed on an intermittent basis.

(3) U.S. Marshal in the Virgin Islands.

(4) [Reserved]

(5) Thirty positions of Field Representative, GS-9 through GS-14, in the Community Relations Service for temporary or intermittent employment for not to exceed 130 working days a year.

(6) Not to exceed 20 positions of Field Representative Trainee, GS-5-7, in the Community Relations Service, for employment on college campuses for not to exceed 130 working days a year. Employment under this authority is limited to 1 year: *Provided*, That an appointment may be extended for one additional year with the prior approval of the Commission.

(b) *Immigration and Naturalization Service.* (1) Information Officer.

(2) Four positions of Regional Commissioner.

(c) *Drug Enforcement Administration.* (1) 154 special agent positions for undercover work.

§ 213.3112 Department of the Interior.

(a) *General.* (1) Temporary, intermittent, or seasonal positions in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of the Commission.

(4) Temporary, intermittent, or seasonal field assistants at GS-5, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority shall not exceed 180 working days a year for posi-

tions at GS-4 and below in survey parties in the Bureau of Land Management and Geological Survey and shall not exceed 130 working days a year for other positions authorized under this subparagraph. This authority shall not apply to positions of field assistants engaged in fishery management work in Alaska.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, That an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to the providing of services to Indians when filled by the appointment of Indians who are one-fourth or more Indian blood.

(8) Subject to prior approval of the Commission, temporary, intermittent, or seasonal positions at GS-7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers; and positions of field assistants engaged in fishery management work. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area, there is no Board of U.S. Civil Service Examiners to service the employing establishment, and there is a shortage of available candidates for the positions.

(9) Subject to prior approval of the Commission, temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work for not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area, there is no Board of U.S. Civil Service Examiners to service the employing establishment, and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(b) *Bureau of Indian Affairs.* (1) Housekeeper positions at a gross salary not in excess of the entrance rate of grade GS-4 or its equivalent when, because of isolation or lack of quarters, appointment through competitive examination is, in the opinion of the Commission, impracticable.

(2) Subject to prior approval of the Commission, assistants in Alaska native schools (not including teachers and instructors) at a salary rate not in excess

of that of GS-4 or its equivalent where the schools are in isolated or remote areas or lack suitable quarters.

(c) *Indian Arts and Crafts Board.*

(1) The Executive Director.

(d) *Bonneville Power Administration.*

(1) Five Area Managers.

(e) *Office of Territories.* (1) The Clerk

of the High Court of American Samoa.

(2) and (3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS-5 or GS-4 and those equivalent to grade GS-7 or GS-6 in which the duties are supervisory or are limited to a highly specialized part of the duties performed by career protective or interpretive personnel of the National Park Service. (The total number of Park Ranger and Park Technician positions at salaries equivalent to GS-7 and GS-6 excepted under this subparagraph and subparagraph (2) of this paragraph shall not exceed 200.) Employment under this subparagraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by the Commission and the Department. These standards include as a minimum the following number of previous seasons' experience in the National Park Service as a Park Ranger at a salary equivalent to the next lower grade:

(i) For IGS-7: Two seasons at IGS-6 level.

(ii) For IGS-6: Two seasons at IGS-5 level.

(iii) For IGS-5: One season at IGS-4 level.

Employment under this subparagraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this subparagraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) Park Aid and Park Technician positions at salaries equivalent to GS-2 through GS-5 to perform technical and practical work supporting the management, conservation, interpretation, development, and use of park areas and resources; and positions at salaries equivalent to GS-7 and GS-6 in which the duties are supervisory or are limited to a highly specialized part of the duties performed by career resources management, interpretive or visitor service personnel of the National Park Service. (The total number of Park Technician and Park Ranger positions at salaries equivalent to GS-7 and GS-6 excepted under this subparagraph and subparagraph (1) of this paragraph shall not exceed 200.) Employment under this subparagraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by the Commission and the Department. These standards include as a minimum

the following number of previous seasons' experience in the National Park Service as a Park Aid or Park Technician equivalent to the next lower grade:

(i) For IGS-7: Two seasons at IGS-6 level.

(ii) For IGS-6: Two seasons at IGS-5 level.

(iii) For IGS-5: One season at IGS-4 level.

(iv) For IGS-4: One season at IGS-3 level or its equivalent in experience.

(v) For IGS-3: One season at IGS-2 level or its equivalent in experience.

Employment under this subparagraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this subparagraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case. *Provided,* That such employment may, with prior approval of the Commission, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS-5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

§ 213.3113 Department of Agriculture.

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agriculture Research Service, the Animal and Plant Health Inspection Service, or positions in the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2) Any local veterinarian employed on a fee basis or a part-time basis.

(3) Not to exceed 25 professional, scientific, or technical positions in grade GS-7 or higher to be filled on an exchange basis by qualified employees on the rolls of State governments, colleges, or universities, for a limited period not to exceed 1 year.

(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of

the Department in positions at and below GS-7 and WG-10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; field enumerators and supervisors; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; collectors of the Farmers Home Administration; agricultural commodity aids (cotton) in the Agricultural Marketing Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research and the Animal and Plant Health Inspection Service; and, subject to prior Commission approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* That an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) Not to exceed eight positions whose incumbents serve on an intermittent or temporary basis as field representatives of the Department of Agriculture and in this capacity represent the Department's Disaster Committee in conducting surveys and appraisals of conditions in areas whose status as "major disaster" areas under Pub. L. 81-875, is under consideration. Employment under this authority shall not exceed 130 working days a year.

(7) [Reserved]

(8) Not to exceed 10 positions directly concerned with programs of the Department for employment of Cuban refugees possessing college-level training appropriate for such positions. No new appointments may be made under this authority after December 31, 1968.

(9) Not to exceed 15 positions of Program Assistant GS-12 through 15 when filled by persons whose current service in agricultural programs of the Department at the State level has provided specialized knowledge and experience needed by the Department for the more efficient administration of its programs. No new appointments may be made under this authority after June 30, 1970.

(b) *Office of the Secretary.* (1) Special Livestock Loans Committeemen employed for not more than 180 working days a year, to approve and direct the servicing of emergency livestock loans.

(2) The positions of the two members and two alternate members of the Board of Forest Appeals which must be filled under departmental regulation by persons who have not been Federal employees for 2 years before appointment. Employment under this exception

shall be on a when-actually-employed basis.

(c) *Forest Service.* (1) Temporary, intermittent, or seasonal positions when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a national forest and as being dependent for livelihood primarily upon employment available within the national forest.

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.* (1) Six Area Directors above GS-14.

(2) Members of State Committees.

(3) State Executive Directors.

(e) *Farmers Home Administration.* (1) State committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of emergency loans pursuant to current statutes authorizing emergency loans. Appointments under this provision shall not exceed 1 year unless extended with the prior approval of the Commission for additional periods not to exceed 1 year each.

(4) State Directors and not to exceed three positions of State Director-at-Large.

(5) Temporary positions in State and county offices of the Farmers Home Administration whose principal duties involve the making and servicing of loans pursuant to the Economic Opportunity Act of 1964. Appointments under this provision shall not exceed 1 year unless extended with prior Commission approval for not to exceed 1 additional year.

(f) *Agricultural Marketing Service.* (1) Positions of cotton classers GS-9 and below, clerks GS-2, supervisory clerks GS-3, and laborers, employed on a seasonal basis in cotton-classing offices outside the Washington, D.C. Metropolitan Area. Employment under this authority (or under a combination of this authority and any other excepting authority) shall not exceed 1,280 hours a year in the case of cotton classers and laborers, and 1,040 hours a year in the case of clerks; except that a GS-5 cotton classer may be employed as a trainee during his first appointment for an initial period of 6 months for training purposes without regard to the above time limitation.

(2) [Reserved]

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(5) Positions of agricultural commodity graders (processed fruits and vegetables), GS-9 and below, and of graders' aides (processed fruits and vegetables),

GS-2-4, for temporary employment on a part-time or intermittent basis for not to exceed 1,280 hours a year.

(6) Temporary positions at GS-9 and below of agricultural commodity graders (poultry) and agricultural commodity graders (dairy). Employment under this authority may not exceed 1,280 hours a year.

(g) *Agricultural Research Service.* (1) Field employees on programs conducted under the terms of cooperative agreements or memorandums of understanding with States or other non-Federal cooperating organizations, provided the employees are jointly selected and their salary is supplied by the cooperators on the basis of not less than a 40-percent contribution by each of the cooperators.

(h) *Foreign Agricultural Service.* (1) Agricultural Attaché positions at grade GS-16 and above where the duties require that the major portion of the employee's time be spent in foreign countries.

(i) [Reserved]

(j) *Food and Nutrition Service.* (1) Temporary positions in grade GS-4 and below, and the wage system equivalents, whose principal duties involve the distribution of food to needy families at Federal Commodity Distribution Centers. After June 30, 1971, appointments under this authority may be made only to replace employees on the rolls as of that date, or their successors.

(k) *Animal and Plant Health Inspection Service.* (1) Field employees on programs conducted under the terms of cooperative agreements or memorandums of understanding with States or other non-Federal cooperating organizations, provided the employees are jointly selected and their salary is supplied by the cooperators on the basis of not less than a 40-percent contribution by each of the cooperators.

(2) Temporary field positions concerned with the control, suppression, and eradication of emergency livestock diseases. Persons appointed under this authority may not be employed in these positions in the Animal and Plant Health Inspection Service for longer than 1 year under this authority, or under a combination of this and any other authorities for excepted appointment that may be appropriate, without prior approval of the Commission. This authority shall be appropriate only in situations declared by the Secretary of Agriculture to be emergencies threatening the livestock industry of the country.

(3) Positions of meat and poultry inspectors (veterinarians at GS-11 and below and nonveterinarians at appropriate grades below GS-11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

§ 213.3114 Department of Commerce.

(a) *General.* (1) Agents to take and transmit meteorological observations in connection with aviation who are employed on a part-time basis and whose compensation is based on a fee for each observation performed rather than on

an hourly or per annum basis: *Provided*, That the number of observations shall not exceed a daily average of 12 during any calendar month.

(2) Employment of individuals, firms, or corporations for not to exceed 1 year for special statistical studies and statistical compilations, other than Personal Census Records Service, the compensation for which is derived from funds deposited with the United States under the Act of May 27, 1935 (49 Stat. 292): *Provided*, That such employments may, with the approval of the Commission, be extended for not to exceed an additional year.

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) [Reserved]

(2) One Civil Aviation Specialist.

(3) One Advisor on Equal Employment Opportunity.

(c) *Coast and Geodetic Survey.* (1) All civilian positions on vessels operated by the Coast and Geodetic Survey.

(2) Temporary positions required in connection with the surveying operations of the field service of the Coast and Geodetic Survey. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(d) *Bureau of the Census.* (1) Supervisors, assistant supervisors, supervisors' clerks, and enumerators in the field service, other than Current Program Interviewers, for temporary, part-time, or intermittent employment for not to exceed 1 year: *Provided*, That such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Commission approval is required for extension for longer than 1 year.

(2) Current Program Interviewers employed on an intermittent basis in the field service.

(3) [Reserved]

(e)-(g) [Reserved]

(h) *Maritime Administration.* (1) Public Information Officer.

(2)-(4) [Reserved]

(5) The positions of Chief Investigator and Security Officer and Deputy Chief Investigator and Security Officer.

(6) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(7) [Reserved]

(8) One Special Assistant to the Administrator (Tanker Advisor).

(9) Two Special Assistants to the Deputy Administrator.

(10) U.S. Merchant Marine Academy, positions of: Professors, instructors, and teachers; including heads of the Departments of Physical Training and Athletics, Ships, Medicine, Ship Management, History and Languages, Mathematics and Science, Nautical Science and Engineering; the Regimental Officer; the Drill and Activities Officers; the

Band and Activities Officer; six Company Officers; and the Assistant Commandant of Cadets.

(11) U.S. Merchant Marine Academy, positions of: The Superintendent; the Executive Officer and Assistant Superintendent; Dean; Registrar and Educational Services Officer; Educational Specialist (Administration) (Assistant Dean); Alumni Records Officer and Placement Director; Librarian; the Special Assistant to the Superintendent; three Academy Training Representatives; and one Shipboard Training Assistant.

(i) Office of the Assistant Secretary for Domestic and International Business.

(1) Thirty positions at GS-12 and above in specialized fields relating to international trade or commerce in the Bureau of International Commerce or in other units under the jurisdiction of the Assistant Secretary for Domestic and International Business. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for any individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS-12 through GS-15, to be filled by persons qualified as industrial or marketing specialists, who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Assistant Secretary for Domestic and International Business, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed two years and may, with prior approval of the Commission, be extended for an additional period of two years.

(j) Environmental Science Services Administration. (1) Subject to prior approval of the Commission, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethel, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) Cook positions on Swan Island.

§ 213.3115 Department of Labor.

(a) Office of the Secretary. (1) Chairman and two members, Employees' Compensation Appeals Board.

(2) Chairman and two members, Benefits Review Board.

(b) Bureau of Labor Statistics. (1) Part-time and intermittent employment

for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS-5 and below. Employment within the Bureau of Labor Statistics under this authority, or a combination of this authority and any other authorities for excepted appointment, shall not exceed:

(i) 180 working days a year for positions at GS-5;

(ii) 130 working days a year for positions at GS-4 and below.

The total number of appointments at GS-5 shall not exceed 75. Appointments at the GS-3 and GS-4 grade levels are not limited in number.

(c) Office of Federal Contract Compliance. (1) All positions at GS-15 and below involving performance of the functions of the program known as "Plans for Progress."

(d) Manpower Administration. (1) Not to exceed 10 positions of Manpower Development Officer and Manpower Development Specialist in the Division of Indian Manpower Programs when filled by the appointment of persons one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities in the development and administration of comprehensive manpower training and employment programs.

§ 213.3116 Department of Health, Education, and Welfare.

(a) National Center for Mental Health Services, Training and Research.

(1) Three Medical Officers (Surgical Resident).

(2) Student Medical Interns for temporary or part-time employment.

(3) Temporary positions of graduate nurses appointed as students for the purpose of receiving 12 weeks of training equivalent to psychiatric affiliation. This authority shall be applied only to positions whose compensation is fixed in accordance with the provisions of section 3 of Pub. L. 80-330.

(4) Three positions of Medical Officers (Radiology Resident): *Provided*, That employment under this authority shall not exceed 1 year, except that selected residents may be nominated and reappointed for an additional year of training when the parent hospital determines that the supplemental training will meet the specialized needs of the individual resident.

(5) Eight positions of psychodrama trainees, including interns and first- and second-year residents. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352.

(6) Two Medical Officers (Anatomical Pathology Resident) for not to exceed 2 years' employment in the case of any one individual.

(7) Three Medical Officers (Internal Medicine Resident) for not to exceed 3 months' employment in the case of any one individual.

(8) Four positions of Medical Officer (Physical Medicine and Rehabilitation

Resident): *Provided*, That employment under this authority shall not exceed 1 year, except that selected residents may be nominated and reappointed for an additional year of training when the parent hospital determines that the supplemental training will meet the specialized needs of the individual resident. Initial appointments may be made at any level within the 3-year residency as approved by the American Medical Association.

(9) Positions of Chaplain Residents: *Provided*, That employment under this authority shall not exceed 39 months for any individual. This authority shall be applied only to positions whose compensation is fixed in accordance with the provisions of 5 U.S.C. sections 5351 and 5352.

(10) One position of Medical Officer (Ophthalmology Resident) when filled by persons whose compensation is fixed under 5 U.S.C. 5351-5356. Employment under this authority may not exceed 4 months.

(b) Public Health Service. (1) Special escorts to accompany patients of the Public Health Service in accordance with existing laws and regulations. Employment under this subparagraph shall be only for the period of time necessary for the escort to deliver the patient to his destination and to return.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in leprosy investigation stations.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health, Education, and Welfare and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, That the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field: *And provided further*, That appropriate exclusions of the positions under the authority of Pub. L. 80-330 have been approved by the Civil Service Commission.

(7) Student Dietitians and Resident Physicians at Freedman's Hospital.

(8) Positions directly and primarily related to the providing of services to Indians when filled by the appointment of Indians who are one-fourth or more Indian blood.

(9) Not to exceed 30 positions of clerical assistants employed on a part-time and intermittent basis to aid cooperating clinicians in non-Federal tuberculosis sanatoria in the keeping of records

and the preparation of reports in connection with research studies into the effectiveness of antimicrobial agents in the treatment of tuberculosis. Persons appointed under this authority may not be employed in this kind of work in the Public Health Service for more than 180 working days in a single year under this authority or under a combination of this and any other authority for excepted appointment that may be appropriate.

(c) *Office of Education.* (1) Positions concerned with problems in education financed and participated in by the Office of Education, Department of Health, Education, and Welfare, and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) *General.* (1) Not to exceed 40 positions in medical and related occupations for employment under the Cuban refugee program. No new appointments may be made after December 31, 1968.

(f) *The President's Council on Physical Fitness.* (1) Three staff assistants, The President's Council on Physical Fitness.

(g) *Social and Rehabilitation Administration.* (1) Not to exceed 195 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees: *Provided*, That new appointments shall be limited to Cuban refugees.

(h) *National Institute of Mental Health—Health Services and Mental Health Administration.* (1) Positions in the National Institute of Mental Health involving performance of various therapeutic and service assignments under a rehabilitation program concerned with the treatment of drug addicts, when filled by persons who have a history of drug addiction and who have been successfully treated.

(i) *National Center for Health Statistics.* (1) Not to exceed 20 positions of Health Examination Representative, grades GS-7 and 9, serving on Health and Nutrition Examination Survey teams of the Division of Health Examination Statistics.

§ 213.3118 Environmental Protection Agency.

(a) Not to exceed 12 positions of Sanitation Facility Trainees, WG-1 through 5, to implement the Alaska Village Demonstration Projects under the Water Quality Improvement Act of 1970. Employment under this authority may not exceed 2 years.

§ 213.3121 National Security Council.

(a) All positions on the staff of the Council.

§ 213.3123 Cabinet Committee on Opportunities for Spanish-Speaking People.

(a) All positions on the committee staff.

§ 213.3124 Board of Governors, Federal Reserve System.

(a) All positions.

§ 213.3126 Office of Emergency Preparedness.

(a) One Field Representative, Resource Readiness Office.

§ 213.3127 Veterans Administration.

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 300 positions of rehabilitation Counselors, GS-3 through GS-11, in drug and alcoholic treatment units when filled by former patients.

§ 213.3128 U.S. Information Agency.

(a) Two Liaison Officers (Congressional) in the Office of the General Counsel.

(b) One Chief of Religious Information.

§ 213.3129 Federal Power Commission.

(a) Three special assistants to the Commission.

§ 213.3130 Securities and Exchange Commission.

(a) Director, Division of Corporation Finance; Director, Division of Corporate Regulation; Director, Division of Trading and Markets.

(b) Nine positions of Regional Administrator.

(c) Positions of accountant and auditor, GS-13 through 15, when filled by persons selected under the SEC accounting fellow program. No more than two positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years.

§ 213.3132 Small Business Administration.

(a) When the President under 42 U.S.C. 1855-1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as

amended, for the duration of the disaster. Original appointments may not exceed 2 years and no employee may serve under this authority for longer than 2 years without the Commission's prior approval.

(b) [Reserved]

(c) Position of Community Economic Industrial Planner, GS-7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members.

§ 213.3133 Federal Deposit Insurance Corporation.

(a) All field positions concerned with the work of liquidating the assets of closed banks or the liquidation of loans to banks, and all temporary field positions the work of which is concerned with paying the depositors of closed insured banks.

(b) One position of Chief Clerk in the San Juan, P.R., office.

§ 213.3135 National Capital Housing Authority.

(a) Executive Director.

(b) Positions of teachers engaged on a part-time or intermittent basis in the instruction of trainees enrolled in training programs on the maintenance and repair of buildings and grounds.

(c) Until December 31, 1975, one position of Chairman, Resident Involvement Workgroup, with responsibility for encouraging tenant participation in the development of a management system.

(d) Until March 1, 1976, seven positions, including two trainee positions, of Resident Housing Manager in an experimental demonstration program of public housing management improvement.

§ 213.3136 U.S. Soldiers' and Airmen's Home.

(a) All positions.

§ 213.3137 General Services Administration.

(a) *General.* (1) Custodians, guards, watchmen, laborers, and other employees engaged in the custody, care, and preservation of plants, warehouses, shipyards, airfields, and surplus facilities of a similar nature pending disposition of such facilities.

(b) *Public Buildings Service.* (1) One Receptionist—Guide, Region 9.

§ 213.3138 [Reserved]

§ 213.3139 U.S. Tariff Commission.

(a) The Secretary of the Commission.

§ 213.3141 National Labor Relations Board.

(a) Election Clerks and Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor Management Relations Act.

§ 213.3142 Export-Import Bank of the United States.

(a) Three Special Assistants to the Board of Directors, grade GS-14 and above, with responsibility for carrying

out special overseas assignments for the Board.

§ 213.3143 Farm Credit Administration.

(a) Federal Land Bank Association receivers and conservators.

(b) Not to exceed seven positions in the Credit Services of the Farm Credit Administration in grades GS-13 or above, requiring technical or administrative experience in the field of agricultural credit: *Provided*, That this authority may be used only when making appointments of persons who have acquired such experience in the Farm Credit Administration or in one or more of the institutions supervised by the Farm Credit Administration.

§ 213.3146 Selective Service System.

(a) State Directors.

(b) Deputy or Assistant State Directors and State Medical Officers in State Headquarters.

(c) [Reserved]

(d) Executive Secretary, National Selective Service Appeal Board.

§ 213.3147 Federal Mediation and Conciliation Service.

(a) Executive Secretary of a Board of Inquiry appointed under section 206 of the Labor-Management Relations Act of 1947 (29 U.S.C. 176).

§ 213.3148 National Aeronautics and Space Administration.

(a) One hundred fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Forty scientific specialists to be engaged on special research projects.

(c) [Reserved]

(d) Ten medical officer positions for employment of third year medical residents in the field of aerospace medicine. An individual may not be employed more than one year under this exception.

§ 213.3149 Panama Canal Company.

(a) All positions on vessels operated by the Panama Canal Company.

§ 213.3152 U.S. Government Printing Office.

(a) One Umpire.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the Washington Technical Institute.

§ 213.3153 District of Columbia Government.

(a) Positions of noneducational employees of the Board of Higher Education, the Board of Vocational Education, the Federal City College, and the Washington Technical Institute.

§ 213.3154 Federal Home Loan Bank Board.

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

(c) All temporary field positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions, or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assets therefrom, and all temporary field positions of the Federal Savings and Loan Insurance Corporation the work of which is concerned with paying the depositors of closed insured institutions.

§ 213.3156 Commission on Civil Rights.

(a) Until June 30, 1978, 25 positions at grade GS-11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88-352, as amended.

§ 213.3157 National Credit Union Administration.

(a) Liquidation Agents employed on a temporary or intermittent basis in the field.

§ 213.3158 Franklin Delano Roosevelt Memorial Commission.

(a) All positions on the staff of the Commission.

§ 213.3161 James Madison Memorial Commission.

(a) One Executive Secretary.

§ 213.3162 National Aeronautics and Space Council.

(a) All positions.

§ 213.3165 President's Advisory Committee on Labor-Management Policy.

(a) One Assistant Executive Director.

§ 213.3170 Civil Service Commission.

(a) Persons employed on a WAE basis to serve as members of the International Organizations Employees Loyalty Board for the purpose of holding hearings overseas.

(b) Chairman, Federal Prevailing Rate Advisory Committee.

§ 213.3172 Administrative Office of the U.S. courts.

(a) Not to exceed five positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal probation officers on active service in the U.S. courts.

§ 213.3173 [Reserved]

§ 213.3182 National Foundation on the Arts and the Humanities.

(a) *National Endowment for the Arts.*
(1) Until June 30, 1976, one Special Assistant to the Chairman.

(2) Until June 30, 1976, Director of State and Community Operations, when filled at GS-15 and below.

(3) Until June 30, 1976, eight Program Directors.

(4) Until June 30, 1976, One Assistant Director for Theatre Programs.

(5) Until June 30, 1976, one Director of Folk Arts Programs.

(6)-(10) [Reserved]

(11) Until June 30, 1976, four Project Evaluators.

(12) Until June 30, 1976, one Director of Museum Programs.

(13) Until June 30, 1976, two Assistant Directors for State and Community Operations.

(14) Until June 30, 1976, one Assistant Director of Music Programs.

(15) Until June 30, 1976, one Director of Developing Arts Programs.

(16) Until June 30, 1976, one Director for Public Media Programs.

(17) Until June 30, 1976, one Assistant to the Chairman.

(18) [Reserved]

(19) Until June 30, 1976, one Director, Interdisciplinary Programs.

(20) Until June 30, 1976, one Director of Special Projects.

(21) Until June 30, 1976, one Assistant Director of Expansion Arts Programs.

(22) Until June 30, 1976, one Assistant Director of Public Media Programs.

(23) Until June 30, 1976, one Assistant Director of Architecture and Environment Arts Programs.

(24) Until June 30, 1976, one Assistant Director of Dance.

(25) Until June 30, 1976, one Assistant Director of Visual Arts.

(26) Until June 30, 1976, one Assistant Director of Museum.

(27) Until June 30, 1976, one Assistant Director of Special Projects.

(28) Until June 30, 1976, one Crafts Coordinator.

(b) *National Endowment for the Humanities.* (1) and (2) [Reserved]

(3) Until June 30, 1976, Director of Planning and Analysis, when filled at GS-15 and below.

(4) Until June 30, 1976, Director of Fellowships and Stipends.

(5) Until June 30, 1976, Director of Research and Grants.

(6) Until June 30, 1976, one Special Assistant to the Chairman.

(7) Until June 30, 1976, two Program Officers, Division of Education Programs.

(8) Until June 30, 1976, three Program Officers, Division of Fellowships and Stipends.

(9) Until June 30, 1976, two Program Officers, Division of Research and Grants.

(10) Until June 30, 1976, one Assistant to the Director of Planning and Analysis.

(11) Until June 30, 1976, Director of Education Programs.

(12) Until June 30, 1976, two Program Officers, Division of Public Programs.

(13) Until June 30, 1976, Director of Public Programs.

(14) Until June 30, 1976, five Program Officers, State-Based Programs, Division of Public Programs.

(15) [Reserved]

(16) [Reserved]

(17) Until June 30, 1976, one Program Officer, Special Projects, Division of Public Programs.

(18) Until June 30, 1976, two Program Officers, Museum Programs, Division of Public Programs.

(19) Until June 30, 1976, two Special Assistants to the Deputy Chairman.

(20) Until June 30, 1976, one Program Analyst, Office of Planning and Analysis.

(21) Until June 30, 1976, one Media Programs Officer, Division of Public Programs.

(22) Until June 30, 1976, one Bicentennial Coordinator, Office of the Chairman.

(23) Until June 30, 1976, one Deputy Director of Public Programs.

(24) Until June 30, 1976, one Program Officer/Deputy Director, Division of Research Grants.

§ 213.3184 [Reserved]

§ 213.3187 District of Columbia Redevelopment Land Agency.

(a) Neighborhood Aide (Urban Renewal) positions when filled by residents of the urban renewal project area in which the Aides will serve. Employment under this authority may not exceed 2 years.

§ 213.3190 [Reserved]

§ 213.3194 Department of Transportation.

(a) *Coast Guard*. (1) Continuing positions at grade GS-9 and below whose incumbents are engaged in the admeasurement or documentation of merchant vessels on a part-time or intermittent basis not exceeding 700 hours in a service year. A person appointed under this authority may not be employed in the Coast Guard under a combination of this authority and any other authority for excepted appointment for more than 700 hours during his service year.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) *The Alaska Railroad*. (1) Temporary, part-time, or intermittent positions of nonsupervisory laborers in Alaska, involving railroad construction or repair work at locations outside the Fairbanks and Anchorage commuting areas when there are no local housing facilities available except crew cars and examination is impracticable because of the mobility of the work site, the short-term nature of a maintenance project, or the immediate need for a temporary work force to cope with unexpected turnover or unexpected situations requiring augmentation of the regular work crew in remote or isolated locations. Employment under this authority shall not exceed 180 working days a year.

(2) The General Manager.

(3) The Assistant General Manager.

(c) *Federal Highway Administration*.

(1) Temporary, intermittent, or seasonal employment in the field service of the Bureau of Public Roads at grades not higher than GS-5 for subprofessional engineering aide work on the highway surveys and constructions projects, for not to exceed 180 working days a year, when in the opinion of the Commission appointment through competitive examination is impracticable.

(d) *Federal Aviation Administration*.

(1) Caretakers and Light Attendants employed on emergency fields and other

air navigation facilities who are paid on a fee basis.

(2) Medical Officer positions on Wake Island.

(3) Laborer positions on Swan Island.

(e) *St. Lawrence Seaway Development Corporation*. (1) Assistant Manager, Seaway International Bridge.

(f) *Urban Mass Transportation Administration*. (1) Employment for not to exceed two years of up to six individuals in grades ranging from GS-11 through 15, for the international seminar on "The Role of Urban Transportation in Community Development."

§ 213.3195 President's Temporary Commission on Pennsylvania Avenue.

(a) Not to exceed six positions on the Temporary Commission staff.

§ 213.3199 Temporary boards and commissions.

(a)-(f) [Reserved]

(g) *The National Council on Indian Opportunity*. (1) Positions at GS-15 and below on the staff of the Council when filled by Indians who are of one-fourth or more Indian blood.

(h)-(j) [Reserved]

(k) *American Revolution Bicentennial Administration*. (1) Positions in grades GS-9 through 15, other than those primarily concerned with administrative and internal management matters.

(l) *Commission on American Shipbuilding*. (1) Until December 31, 1973, positions at GS-15 and below on the staff of the Commission.

(m) *Cost of Living Council and Related Organizations*. (1) Until April 30, 1974, not to exceed 50 positions in grades GS-12 and above when it is determined that existing registers are not appropriate or do not permit appointment expeditiously.

(n) *National Commission on Productivity*.

(1) Until June 30, 1975, positions in grade GS-15 and below on the staff of the Commission.

(o) *Marine Mammal Commission*.

(1) Until June 30, 1977, all positions on the staff of the Commission.

(p) *Micronesian Claims Commission*.

(1) Until October 15, 1976, 4 Legal Research Assistant positions on the staff of the Commission.

(q) *Alaska Native Claims Ad Hoc Appeals Board*.

(1) Members of this Board.

SCHEDULE B

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

The positions enumerated in §§ 213.3202 to 213.3299 are positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination and which are excepted from the competitive service and constitute Schedule B. Appointments to these positions are subject to such noncompetitive examination as may be prescribed by the Commission.

§ 213.3202 Entire executive civil service.

(a) Student Trainee positions established in connection with a bachelor's degree cooperative education program which provides for a formally arranged schedule of periods of attendance at an institution of higher learning combined with periods of at least six months of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and provide experience necessary for career or career-conditional appointment to administrative, professional, or technical positions in the Federal Government upon the student's graduation. The Commission's determination on requirements relating to appointments under this paragraph will be published in the Federal Personnel Manual. Except for the requirement concerning competitive selection from a register, appointments under this paragraph are subject to all the requirements and conditions governing career-conditional appointment, including investigation by the Commission to establish an appointee's qualifications and suitability. Appointees may not continue to serve in Student Trainee positions more than 90 days after completion of or separation from the cooperative education program.

§ 213.3203 Executive Office of the President.

(a) *Office of Economic Opportunity*. (1) Seven Regional Directors.

(2) Not to exceed 35 positions at GS-9 through GS-15 in new, experimental programs or special projects when it is determined that existing registers are not appropriate or do not permit appointment expeditiously. This authority may not be used after June 30, 1973.

(3) One Chief, Research and Plans Division.

§ 213.3204 Department of State.

(a) Persons formerly employed abroad in the Foreign Service of the United States (this means civilian employment in the executive branch) for a period of at least 4 years for service in executive and administrative positions, or for at least 2 years for professional positions, in grades GS-9 and above.

(b) Technical cryptographic positions in the Communications Security Division, Office of Communications.

(c) Director and Deputy Director, Foreign Buildings Operations.

§ 213.3205 Department of the Treasury.

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) [Reserved]

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades

GS-13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employment under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by the Commission. Service under this authority may not exceed (1) a total of 4 years or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

§ 213.3206 Department of Defense.

(a) *Office of the Secretary* (1) [Reserved]

(2) Professional positions at GS-11 through GS-15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3) [Reserved]

(4) One Assistant for Counter-Insurgency, Office of the Assistant Secretary (International Security Affairs).

§ 213.3209 Department of the Air Force.

(a) Positions assigned exclusively to Air Force Communications Intelligence Activities excluding positions in Cryptologic Intelligence Activities/Functions.

(b) Civilian Deans and Professors at the Air Force Institute of Technology, Wright-Patterson Air Force Base, Dayton, Ohio.

§ 213.3210 Department of Justice.

(a) [Reserved]

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

§ 213.3212 Department of the Interior.

(a) Any competitive position at an Indian school when filled by the spouse of a competitive employee of the school, when because of isolation or lack of quarters, the Commission deems appointment through competitive examination impracticable.

§ 213.3214 Department of Commerce.

(a) *Bureau of Census*. (1) Not to exceed 100 positions of interviewers, supervisors, and data collection specialists in the Census Bureau who conduct interviews in the hard-core poverty areas of large cities or who supervise the conduct of these interviews, when filled by residents of the areas served.

(b) *Economic Development Administration*. (1) Four Area Supervisors.

(2) Four Assistant Area Supervisors.

(c) *Office of Minority Business Enterprise*. (1) Until December 31, 1974, not to exceed 35 positions of Minority Business Opportunity Specialist at grades GS-9 through GS-15.

(d) *Office of Telecommunications*. (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS-11 through 15. Employment under this authority may not exceed 2 years.

§ 213.3215 Department of Labor.

(a) and (b) [Reserved]

(c) Not to exceed 35 positions of Manpower Development Specialist at grades GS-9 through GS-15 in the Manpower Administration. This authority may not be used after June 30, 1973.

§ 213.3216 Department of Health, Education, and Welfare.

(a) *Office of Education*. (1) Fifty positions, GS-7 through GS-11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Civil Service Commission, be extended for an additional period of 1 year.

(b) [Reserved]

(c) Not to exceed 10 positions of HEW Fellows in grades GS-11 through 15. Employment under this authority may not extend beyond 1 year.

§ 213.3228 U.S. Information Agency.

(a) Persons formerly employed abroad in the Foreign Service of the United States or as Binational Center Grantees for a period of at least 4 years for service in executive and administrative positions, or for at least 2 years for professional positions, in grades GS-9 and above.

§ 213.3229 Federal Power Commission.

(a) A Chief Engineer.

§ 213.3242 Export-Import Bank of the United States.

(a) Not to exceed 24 positions of Loan Specialist GS-7 through 14 when occupied by persons selected jointly by commercial banks and the agency for participation in the Eximbank-Commercial Bank Orientation Program. Appointments under this authority may not exceed 15 months.

§ 213.3246 Selective Service System.

(a) Positions in the Selective Service System when filled by persons who as commissioned officer personnel in the Armed Forces have previously been trained for or have been on active military duty in the Selective Service program, and cannot, for some reason beyond their control, be brought to active military duty in the current Selective Service program.

§ 213.3253 District of Columbia Government.

(a) Chairman, Secretary and Members of the Board of Police and Fire Surgeons, District of Columbia.

§ 213.3259 Action.

(a) *Office of Domestic and Anti-Poverty Operations*. (1) Not to exceed 25

positions of Program Specialist at grades GS-9 through GS-15.

(2) Until December 31, 1975, not to exceed 10 positions of Regional Director, GS-15. Employment under this authority may not exceed 2 years: Provided, That the Director of ACTION may extend appointments made under this authority for up to 2 additional years if he deems such action essential to the accomplishment of agency goals.

§ 213.3268 Agency for International Development.

(a) Not to exceed 30 positions at GS-9 and above when filled by persons who have served overseas with the Agency for International Development for not less than 2 years.

§ 213.3276 Appalachian Regional Commission.

(a) Two Program Coordinators.

SCHEDULE C

§ 213.3301 Positions of a confidential or policy-determining character.

The positions enumerated in §§ 213.3302 to 213.3399 are positions of a confidential or policy-determining character which are excepted from the competitive service, to which appointments may be made without examination by the Commission and which constitute Schedule C.

§ 213.3301a Special revocation of exceptions.

The exception from the competitive service for each position in the executive branch listed in Schedule C which is classified in grade GS-16, GS-17, or GS-18, and is covered by Civil Service Rule IX (§ 9.1 of Subchapter A of this chapter) is revoked effective November 17, 1967. Each such position is removed from Schedule C effective November 17, 1967.

§ 213.3301b Revocation of exceptions.

(a) Except as provided by paragraph (b) of this section the exception from the competitive service for each position at GS-15 and below in the executive branch listed in schedule C is revoked when the position has been vacant for 60 calendar days or more.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission may delay the revocation action for an additional 60 calendar days when the agency demonstrates that it: (1) Has been actively recruiting for the position; (2) has made a tentative selection; and (3) has set an appointment date within the additional 60-day period.

(c) An agency shall notify the Commission within 3 work days after a schedule C position at GS-15 and below has been vacated or filled.

§ 213.3303 Executive Office of the President.

(a) *Office of Management and Budget*.

(1) Four Secretaries to the Director.

(2) One Special Assistant to the Deputy Director.

(3) One Private Secretary to the Deputy Director.

(4) Associate Director.

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- (5) [Reserved]
- (6) One Secretary to each of four Associate Directors.
- (7) Four Assistant Directors.
- (8) One Private Secretary to each of two Assistant Directors.
- (9) [Reserved]
- (10) Associate Director for National Security and International Affairs.
- (11) Associate Director for Human and Community Affairs.
- (12) Associate Director for Economics and Government.
- (13) Associate Director for Natural Resources, Energy and Science.
- (14) One Secretary to the Assistant to the Director for Public Affairs.
- (15) One Special Assistant to the Assistant Director for Operations.
- (16) One Confidential Secretary to the Administrator, Office of Federal Procurement Policy.
- (b) *Council of Economic Advisers.*
- (1) Three Private Secretaries to the Chairman and one to each of the other two members.
- (c) *Office of Science and Technology.*
- (1) One Confidential and Secretarial Assistant to the Director.
- (2) One Confidential and Secretarial Assistant to the Deputy Director.
- (3) [Reserved]
- (4) One Staff Assistant.
- (5) [Reserved]
- (6) One Confidential Secretary to the Director.
- (d) *Office of the Special Representative for Trade Negotiations.*
- (1)-(5) [Reserved]
- (6) One Confidential Staff Assistant to the Deputy Special Trade Representative.
- (e) *President's Commission on Personnel Interchange.* (1) The Executive Director.
- (f) *President's Commission on White House Fellows.* (1) The Executive Director.
- (2) The Associate Executive Director.
- (g) *Council on Environmental Quality.*
- (1) One Special Assistant to the Chairman.
- (2) One Confidential Assistant to each Member of the Council.
- (h) [Reserved]
- (i) *Office of Telecommunications Policy.* (1) [Reserved]
- (2) [Reserved]
- (3) One Confidential Assistant to the Deputy Director.
- (4) One Courier.
- (5) [Reserved]
- (6) Confidential Secretary to the Director.
- (7) One Confidential Secretary to the Deputy Director.
- (j) *Special Action Office for Drug Abuse Prevention.*
- (1)-(5) [Reserved]
- (6) One Director, Congressional Liaison.
- (k) *Office of Economic Opportunity.*
- (1) One Assistant Director for Plans, Research, and Evaluation.
- (2) Two Special Assistants to the Director.
- (3) One Confidential Assistant to one Special Assistant to the Director and one

- Confidential Secretary to the other Special Assistant to the Director.
 - (4) One Confidential Assistant to the Director.
 - (5) One Confidential Secretary and one Private Secretary (Steno) to the Director.
 - (6) One Confidential Secretary to the General Counsel.
 - (7) One Executive Assistant to the Director.
 - (8) One Deputy Associate Director for Human Rights.
 - (9) One Special Assistant to the Assistant Director for Operations.
 - (10) One Confidential Staff Assistant to the Assistant Director of Operations.
 - (11) One Chief, State and Local Government Division.
 - (12) One Coordinator, Youth Affairs Program.
 - (13)-(14) [Reserved]
 - (15) One Coordinator, Rural Affairs Program.
 - (16) One Planning and Review Advisor to the Associate Director for Program Review.
 - (17) One Chief, Private Resources Division.
 - (18) One Special Assistant to the Associated Director for Program Review.
 - (19) One Confidential Advisor to the Associate Director for Congressional Relations.
 - (20) One Congressional Relations Specialist.
 - (21) Two Confidential Assistants to the Associate Director for Public Affairs.
 - (22) One Deputy Associate Director for Congressional Relations.
 - (23) One Confidential Secretary to the Associate Director for Public Affairs.
- § 213.3304 Department of State.
- (a) *Office of the Secretary.* (1) [Reserved]
 - (2) Four Private Secretaries to the Secretary.
 - (3)-(8) [Reserved]
 - (9) The Chief of Protocol.
 - (10) [Reserved]
 - (11) One Personal Assistant to the Under Secretary for Coordinating Security Assistance Programs.
 - (12) One Personal Assistant to the Ambassador at Large and Chief of Mission to the North Atlantic Treaty Organization.
 - (13)-(14) [Reserved]
 - (15) One Private Secretary to the Executive Assistant to the Secretary.
 - (16) One Secretary (Stenography) to the Deputy Under Secretary for Management.
 - (17) One Personal Assistant to the Ambassador-at-Large.
 - (18) One Assistant Chief of Protocol for Ceremonial Affairs.
 - (19) One Assistant Chief of Protocol for Visits.
 - (b) [Reserved]
 - (c) *Office of the Assistant Secretary for Congressional Relations.* (1) One Confidential Assistant to the Assistant Secretary.
 - (2) [Reserved]
 - (3) [Reserved]
 - (4) One Legislative Officer.

- (d) [Reserved]
 - (e) *Bureau of Economic Affairs.* (1) One Private Secretary to the Assistant Secretary.
 - (f) *Bureau of Intelligence and Research.* (1) One Private Secretary.
 - (2) Director of Intelligence and Research.
 - (g) [Reserved]
 - (h) *Bureau of International Organization Affairs.*
 - (1) [Reserved]
 - (2) One Secretary and Personal Assistant to the U.S. Representative to the Council of the Organization of American States.
 - (i) [Reserved]
 - (j) [Reserved]
 - (k) *Bureau of Inter-American Affairs.*
 - (1) One Private Secretary to the Assistant Secretary.
 - (l) *Office of the Legal Adviser.* (1) One Private Secretary to the Legal Adviser.
 - (m)-(p) [Reserved]
 - (q) *Office of the Under Secretary for Economic Affairs.* (1) [Reserved]
 - (2) One Confidential Assistant to the Under Secretary.
 - (r) [Reserved]
 - (s) *Bureau of Educational and Cultural Affairs.* (1) One Private Secretary to the Assistant Secretary for Educational and Cultural Affairs.
 - (2) [Reserved]
 - (t) *Office of the Inspector General, Foreign Assistance.* (1) One Private Secretary to the Inspector General, Foreign Assistance.
 - (2) One Private Secretary to the Deputy Inspector General, Foreign Assistance.
 - (u) *Office of the Counselor.*
 - (1) [Reserved]
 - (2) One Staff Assistant to the Counselor.
 - (v) *Bureau of Politico-Military Affairs.* (1) One Private Secretary to the Director.
 - (w) *Planning and Coordination Staff.*
 - (1) One Personal Assistant to the Director.
 - (x) *Office of the Director, Bureau of International Scientific and Technological Affairs.* (1) One Secretary to the Director.
 - (y) *Office of the Assistant Secretary for Public Affairs.* (1) One Secretary and Personal Assistant to the Assistant Secretary for Public Affairs.
 - (z) *Office of the Assistant Secretary for Near Eastern and South Asian Affairs.* (1) Secretary to the Assistant Secretary.
- § 213.3305 Department of the Treasury.
- (a) *Office of the Secretary.* (1) [Reserved]
 - (2) Special Assistant to the Secretary (National Security Affairs).
 - (3) [Reserved]
 - (4) One Public Information Officer.
 - (5) One Deputy Under Secretary for Monetary Affairs.
 - (6) One Staff Assistant to the Special Assistant to the Secretary (National Security Affairs).
 - (7) [Reserved]

(8) One Confidential Assistant to the Special Assistant to the Secretary (Public Affairs).
 (9) Two Special Assistants to the Deputy Secretary.
 (10) One Deputy Special Assistant to the Secretary (National Security Affairs).
 (11) One Special Assistant to the Secretary (Organized Crime).
 (12) One Staff Assistant to the Assistant Secretary (International Affairs).
 (13) Two Secretaries to the Secretary.
 (14) One Liaison Officer, Officer of the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).
 (15) One Confidential Assistant to the Deputy Secretary.
 (16) One Confidential Secretary to the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).
 (17) One Confidential Assistant to the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).
 (18) One Confidential Secretary to the Assistant Secretary (Economic Policy).
 (19) One Staff Assistant to the Assistant Secretary for Trade, Energy, and Financial Resources Policy Coordination.
 (20) Deputy to the Assistant Secretary, Saudi Arabian Operations and Policies.
 (21) [Reserved]
 (22) One Confidential Staff Assistant to the Assistant Secretary for International Affairs.
 (23) Assistant to the Secretary for Legislative Affairs.
 (24) Two Liaison Officers.
 (25) One Secretary to the Special Assistant to the Secretary (Public Affairs).
 (26) [Reserved]
 (27) [Reserved]
 (28) One Special Assistant to the Assistant Secretary (International Affairs).
 (29) One Deputy Assistant Secretary for Industrial Nations Finance (International Affairs).
 (30) One Deputy Assistant Secretary for Trade and Investment Policy (International Affairs).
 (31) One Deputy Assistant Secretary for Research and/or Director of Research (International Affairs).
 (32) Deputy Assistant Secretary for Developing Nations Finance.
 (33) One Staff Assistant to the Assistant to the Secretary for Legislative Affairs.
 (34) [Reserved]
 (35) One Special Assistant to the Under Secretary.
 (36)-(37) [Reserved]
 (38) One Secretary to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).
 (39) One Secretary to the Assistant Secretary for Administration.
 (40) One Executive Assistant to the Deputy Secretary.
 (41) One Staff Assistant to the Assistant Secretary (Legislative Affairs).
 (42) [Reserved]
 (43) One Confidential Assistant to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).

(44) Special Assistant to the Secretary.
 (45) Energy Adviser to the Deputy Secretary.
 (46) Special Assistant to the Assistant Secretary for International Affairs.
 (47) Three Staff Assistants to the Secretary.
 (48) One Secretary to the Assistant Secretary (Legislative Affairs).
 (49) [Reserved]
 (50) Executive Assistant to the Deputy Secretary and Administrator, Federal Energy Office.
 (51) Two Special Assistants to the Assistant Secretary (Legislative Affairs).
 (52) Assistant to the Secretary and Director, Office of Revenue Sharing.
 (53) One Confidential Assistant to the Treasurer of the United States.
 (54) Special Assistant to the Secretary.
 (55) One Confidential Assistant to the Secretary.
 (56) Two Staff Assistants (Secretary) to the Secretary.
 (b) [Reserved]
 (c) Bureau of Customs. (1) Commissioner of Customs.
 (2) [Reserved]
 (3) [Reserved]
 (4) One Confidential Staff Assistant to the Commissioner of Customs.
 (d) [Reserved]
 (e) [Reserved]
 (f) Bureau of the Mint. (1) [Reserved]
 (2) One Confidential Assistant to the Director of the Mint.
 (3) One Confidential Secretary to the Director of the Mint.
 § 213.3306 Department of Defense.
 (a) Office of the Secretary. (1) One Special Assistant and two Private Secretaries to the Secretary.
 (2) One private secretary to the Deputy Secretary of Defense and one private secretary to each of the following: the Director of Defense Research and Engineering; the Principal Deputy Director of Defense Research and Engineering; the Deputy Directors of Defense Research and Engineering (Tactical Warfare Programs), (Strategic Systems), (Research and Technology), the Director, Advanced Research Projects Agency; the Assistant Secretaries of Defense (Manpower and Reserve Affairs), (International Security Affairs), (Public Affairs), (Installations and Logistics), (Comptroller), (Systems Analysis), (Intelligence), and (Legislative Affairs); the General Counsel; the Assistant to the Secretary of Defense (Atomic Energy); and the Military Assistants to the Secretary of Defense.
 (3) One Chauffeur to the Secretary and one Chauffeur to the Deputy Secretary.
 (4) One Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs).
 (5) The Defense Advisor to USNATO in Brussels, Belgium.
 (6) Two Private Secretaries to the Defense Advisor to USNATO in Brussels, Belgium.
 (7) [Reserved]

(8) One Assistant to the Secretary of Defense (Legislative Affairs).
 (9) [Reserved]
 (10) One Special Assistant to the Assistant Secretary of Defense (Legislative Affairs).
 (11) One Personal Secretary to the Deputy Secretary of Defense.
 (12) One Private Secretary to the Principal Deputy Assistant Secretary (International Security Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.
 (13) One private secretary to the Special Assistant to the Secretary of Defense.
 (14) [Reserved]
 (15) One Staff Assistant to the Special Assistant to the Secretary of Defense.
 (16) One Staff Assistant to the Director of Economic Utilization Policy, Office of the Assistant Secretary of Defense (Installations and Logistics).
 (17)-(22) [Reserved]
 (23) Four Deputy Directors of Defense Research and Engineering and the Director, Advanced Research Projects Agency.
 (24) [Reserved]
 (25) One Principal Deputy Director of Defense Research and Engineering.
 (26)-(28) [Reserved]
 (29) Principal Deputy Assistant Secretary of Defense (Comptroller).
 (30) [Reserved]
 (31) One Private Secretary to the Deputy Assistant Secretary (Reserve Affairs).
 (32) [Reserved]
 (33) One Private Secretary and Confidential Assistant to the Assistant to the Secretary.
 (34) [Reserved]
 (35) One Private Secretary to the Assistant Secretary (Health and Environment).
 (36) [Reserved]
 (37) One Personal Security Assistant to the Secretary.
 (38) [Reserved]
 (39) One Private Secretary to the Principal Deputy Assistant Secretary (Systems Analysis).
 (40) One Confidential Assistant to the Deputy Director of Defense Research and Engineering (Test and Evaluation).
 (41) One Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Strategic Arms Limitation Talks.
 (42) Special Assistant for Congressional Relations, Office of the Principal Deputy, Office of the Assistant Secretary of Defense (International Security Affairs).
 (43) [Reserved]
 (44) [Reserved]
 (45) One Private Secretary to the Principal Deputy Assistant Secretary (Manpower and Reserve Affairs).
 (46) One Confidential Assistant to the Special Assistant to the Secretary.
 (47) One Personal and Confidential Assistant to the Secretary of Defense.
 (48) One Private Secretary to the Principal Deputy Assistant Secretary (Public Affairs).

(49) One Private Secretary to the Principal Deputy Assistant Secretary (Health and Environment).

(50)-(52) [Reserved]

(53) One Special Assistant for Accession Policy to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

(54) One Private Secretary to the Secretary of Defense, Mutual and Balanced Force Representative.

(55) One Private Secretary to the Assistant to the Secretary and Deputy Secretary of Defense for Resource Utilization.

(56) One Personal and Confidential Assistant to the Director of Net Assessment.

(57) One Private Secretary to the Director of Net Assessment.

(58) One Special Assistant to the Director, Telecommunications and Command and Control Systems.

(59) One Private Secretary to the Director, Telecommunications and Command and Control Systems.

(60) One Special Assistant for Communication and Community Liaison to the Deputy Assistant Secretary (Equal Opportunity).

(61) Director of Telecommunications and Command and Control Systems.

(62) Principal Deputy Assistant Secretary of Defense (International Security Affairs).

(63) One Secretary to the President, Uniformed Services University of the Health Sciences.

(64) President of the Uniformed Services University of the Health Sciences.

(65) One Confidential Assistant to the Assistant Secretary of Defense (Health and Environment).

(66) One Special Assistant to the Principal Deputy Assistant Secretary (Comptroller).

(b) *Court of Military Appeals.* (1) One Private Secretary and one Technical Assistant to each Judge of the Court.

(c) *Interdepartmental Programs.* (1) [Reserved]

(2) Two Private Secretaries engaged in the interdepartmental activities of the office of the Secretary of Defense.

(3) [Reserved]

(4) [Reserved]

(d) [Reserved]

(e) *Defense Civil Preparedness Agency.*

(1) The Director.

(2) One Special Assistant to the Director.

(3) One Labor Liaison Advisor to the Director.

§ 213.3307 Department of the Army.

(a) *Office of the Secretary.* (1) One Private Secretary or Confidential Assistant to the Secretary, to the Under Secretary, and to each Assistant Secretary of the Army.

(2) The General Counsel.

(3)-(7) [Reserved]

(b) [Reserved]

§ 213.3308 Department of the Navy.

(a) *Office of the Secretary.* (1) [Reserved]

(2) Two Private or Confidential Secretaries to the Secretary and one to the Under Secretary and to each Assistant Secretary of the Navy.

(3)-(8) [Reserved]

(9) Two Special Assistants to the Military Assistant to the President.

(10) [Reserved]

(11) [Reserved]

(12) General Counsel.

§ 213.3309 Department of the Air Force.

(a) *Office of the Secretary.* (1) Two Private Secretaries to the Secretary, one Private Secretary to the Undersecretary, and one Private Secretary each to each of the four Assistant Secretaries of the Air Force.

(2) The General Counsel.

(3) One Private Secretary to the General Counsel.

(4)-(6) [Reserved]

(7) One Administrative Assistant and one Private Secretary in the Office of the Military Aide to the Vice President.

(8) Two Private Secretaries in the Office of the Military Assistant to the President.

(9) One Secretary to the Deputy Assistant Secretary of the Air Force (Research and Development).

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* (1) Three Private Secretaries to the Attorney General.

(2) [Reserved]

(3) [Reserved]

(4) One Confidential Assistant to the Attorney General.

(5) Four Secretaries for the Attorney General.

(6) One Receptionist for the Attorney General.

(7) [Reserved]

(8) Associate Attorney General.

(9) One Secretary to the Associate Attorney General.

(b) *Office of the Deputy Attorney General.* (1) One Confidential Assistant (Private Secretary) to the Deputy Attorney General.

(2) and (3) [Reserved]

(4) One Confidential Secretary to the Associate Deputy Attorney General.

(5) One Staff Assistant to the Deputy Attorney General.

(6) One Special Assistant to the Director, Office of Criminal Justice.

(7) One Staff Assistant to the Associate Deputy Attorney General.

(c) *Office of the Solicitor General.* (1) One Confidential Assistant (Private Secretary) to the Solicitor General.

(d) *Anti-Trust Division.* (1) One Chief, Field Office.

(2) One Confidential Assistant (Private Secretary) to the Assistant Attorney General.

(e) *Civil Division.* (1) Chief, Admiralty and Shipping Section, New York.

(2) One position of Confidential Assistant (Private Secretary) to the Assistant Attorney General.

(3) [Reserved]

(f) *Criminal Division.* (1) One Confidential Assistant (Private Secretary) to the Assistant Attorney General.

(g) *Tax Division.* (1) One Confiden-

tial Assistant (Private Secretary) to the Assistant Attorney General.

(h) *Land and Natural Resources Division.* (1) One Confidential Assistant (Private Secretary) to the Assistant Attorney General.

(i) *Drug Enforcement Administration.* (1) One position of Staff Assistant to the Administrator.

(2) One Special Assistant to the Administrator.

(j) *Immigration and Naturalization Service.*

(1) One Public Information Officer.

(k) *Board of Immigration Appeals.*

(1) Executive Assistant.

(2) Three Members of the Board.

(l) *Office of Legal Counsel.* (1) One Confidential Assistant (Private Secretary) to the Attorney General.

(m) *Bureau of Prisons.* (1) The Director.

(n) *Federal Prison Industries, Inc.* (1) The Commissioner of Industries.

(o) *Office of U.S. Attorney.* (1) Secretary and Confidential Assistant to the U.S. Attorney (23 positions).

(p) *Internal Security Division.* (1) [Reserved]

(2) [Reserved]

(3) Chief, Foreign Agents Registration section.

(4) [Reserved]

(5) [Reserved]

(q) *Civil Rights Division.* (1) One Confidential Assistant (Private Secretary) to the Assistant Attorney General.

(2) [Reserved]

(3) [Reserved]

(r) *Community Relations Service.* (1) One Private Secretary to the Director.

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

(5) Three Special Assistants to the Director.

(6) One Special Assistant to the Deputy Director.

(7) One Staff Assistant to the Director.

(s) *Law Enforcement Assistance Administration.* (1) [Reserved]

(2) One Confidential Secretary to each of the two Associate Administrators.

(3) One Special Assistant to the Administrator.

(4) [Reserved]

(5) One Secretary to the Director, National Institute of Law Enforcement and Criminal Justice.

(6) One Deputy Director, National Institute of Law Enforcement and Criminal Justice.

(7) One Special Assistant to the Director, National Institute of Law Enforcement and Criminal Justice.

(8) One Special Assistant to the Deputy Administrator.

(9) One Secretary to the Deputy Administrator.

(10) One Special Assistant to the Deputy Administrator for Policy.

(t) *Office for Drug Abuse Law Enforcement.* (1) One Director.

(u) *Office of National Narcotics Intelligence.*

(1) One Director.

(2) One Confidential Assistant and Private Secretary to the Director.
 (v) *Office of Legislative Affairs.*
 (1) One Secretary to the Assistant Attorney General.
 (2) [Reserved]
 (w) *Watergate Special Prosecution Force.* (1) One Special Assistant for Public Information to the Special Prosecutor.
§ 213.3312 Department of the Interior.
 (a) *Office of the Secretary.* (1) Eight Confidential Assistants to the Secretary.
 (2) Four Special Assistants to the Secretary.
 (3) Six Special Assistants (Field Representatives).
 (4) Chauffeur for the Secretary.
 (5) Three Special Assistants to the Assistant Secretary for Fish and Wildlife and Parks and one Confidential Assistant (Administrative Assistant) to each of the four Assistant Secretaries for Energy and Minerals, Land and Water Resources, Fish and Wildlife and Parks, and Congressional and Public Affairs.
 (6) One Assistant to the Assistant Secretary for Energy and Minerals (Congressional Liaison).
 (7) [Reserved]
 (8) One Private Secretary to the Under Secretary.
 (9) One Secretarial Attendant to the Secretary.
 (10) [Reserved]
 (11) [Reserved]
 (12) One Assistant and Science Adviser to the Secretary.
 (13) One Confidential Assistant to the Assistant to the Secretary and Director of Communications.
 (14) [Reserved]
 (15) One Confidential Assistant to the Secretary (Interdepartmental Activities).
 (16) [Reserved]
 (17) One Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs.
 (18)-(21) [Reserved]
 (22) One Confidential Assistant to the Director, Office of Hearings and Appeals.
 (23) One Confidential Assistant to the Executive Assistant to the Secretary.
 (24) [Reserved]
 (25) [Reserved]
 (26) Three Assistants to the Secretary (Congressional Liaison).
 (27)-(29) [Reserved]
 (30) One Special Assistant to the Assistant Secretary for Management.
 (31) One Confidential Assistant to the Assistant Secretary for Management.
 (32)-(33) [Reserved]
 (34) Two Staff Assistants to the Assistant Secretary for Program Development and Budget.
 (35)-(36) [Reserved]
 (37) One Special Assistant to the Assistant Secretary for Energy and Minerals.
 (38)-(41) [Reserved]
 (42) One Assistant to the Assistant Secretary, Land and Water Resources.
 (43) [Reserved]
 (b) *Office of the Solicitor.* (1) One Confidential Assistant to the Solicitor.

(2) One Special Assistant to the Solicitor.
 (3) One Confidential Assistant to the Deputy Solicitor.
 (c) [Reserved]
 (d) *Bureau of Mines.* (1) [Reserved]
 (e) [Reserved]
 (f) [Reserved]
 (g) *Southeastern Power Administration.* (1) [Reserved]
 (h) *National Park Service.* (1) Director.
 (2) [Reserved]
 (3) Three Special Assistants to the Director.
 (4) One Executive Assistant to the Director.
 (5) One Staff Assistant to the Director.
 (6) One Special Program Assistant to the Director.
 (i) *Bonneville Power Administration.*
 (1) Administrator.
 (2) Confidential Assistant to the Administrator.
 (3)-(4) [Reserved]
 (j) [Reserved]
 (k) *Southwestern Power Administration.* (1) Administrator.
 (2) [Reserved]
 (3) One Confidential Assistant to the Administrator.
 (4) One Executive Assistant to the Administrator.
 (l) *Office of the Director of Territorial Affairs.* (1) [Reserved]
 (2) One Secretary of American Samoa.
 (3) One Chief Justice of American Samoa.
 (4)-(10) [Reserved]
 (11) One Secretary to the High Commissioner of the Trust Territory.
 (12) One Staff Assistant to the Director.
 (m) *Bureau of Outdoor Recreation.*
 (1) The Director.
 (2) [Reserved]
 (3) [Reserved]
 (4) One Associate Director for Programs.
 (n) [Reserved]
 (o) [Reserved]

§ 213.3313 Department of Agriculture
 (a) *Office of the Secretary.* (1) One Administrative Assistant to the Secretary.
 (2) One Assistant to the Secretary for Intergovernmental Affairs.
 (3)-(4) [Reserved]
 (5) Five Confidential Assistants to the Secretary.
 (6) [Reserved]
 (7) One Chauffeur for the Secretary.
 (8) One Private Secretary and Administrative Assistant to the Executive Assistant to the Secretary.
 (9) One Confidential Assistant to the Assistant Secretary for Marketing and Consumer Services.
 (10) One Private Secretary to each of the four Assistant Secretaries other than the Administrative Assistant Secretary.
 (11) One Confidential Assistant to the Assistant Secretary for Conservation, Research, and Education.
 (12) One Confidential Assistant to the

Assistant Secretary for International Affairs and Commodity Programs.
 (13)-(19) [Reserved]
 (20) One Confidential Assistant to the Assistant Secretary for Rural Development.
 (21) [Reserved]
 (22) [Reserved]
 (23) [Reserved]
 (24) One Private Secretary to the Assistant to the Secretary for Intergovernmental Affairs.
 (25) One Private Secretary to the Assistant to the Secretary for Public Affairs.
 (26) One Private Secretary to the Director of Equal Opportunity.
 (27)-(31) [Reserved]
 (32) One Private Secretary to the Deputy Assistant Secretary for Marketing and Consumer Service.
 (33) One Private Secretary to the Deputy Assistant Secretary for Rural Development.
 (34) One Special Assistant to the Secretary for Consumer Affairs.
 (35) [Reserved]
 (36) Deputy Assistant Secretary for Rural Development.
 (b) *Rural Electrification Administration.* (1) One Private Secretary to the Administrator.
 (2)-(3) [Reserved]
 (4) One Assistant to the Administrator.
 (c) *Office of the Under Secretary.*
 (1) One Administrative Officer and Private Secretary to the Under Secretary.
 (2) and (3) [Reserved]
 (4) One Private Secretary to the Deputy Under Secretary for Congressional Liaison.
 (5) [Reserved]
 (6) Three Confidential Assistants to the Deputy Under Secretary for Congressional Relations.
 (7) Ten Federal Regional Council Representatives.
 (d) *Office of the General Counsel.*
 (1)-(2) [Reserved]
 (3) One Private Secretary to the General Counsel.
 (e) *Foreign Agricultural Service.* (1) [Reserved]
 (2) The Administrator.
 (f) *Farmers Home Administration.*
 (1)-(2) [Reserved]
 (3) One Assistant to the Administrator.
 (4) Two Confidential Assistants to the Administrator.
 (5) One Private Secretary to the Administrator.
 (g) *Federal Crop Insurance Corporation.* (1) The Manager.
 (2) Members of the Board of Directors.
 (3) One Private Secretary to the Manager.
 (4) [Reserved]
 (h) *Agricultural Stabilization and Conservation Service.* (1) Administrator.
 (2)-(3) [Reserved]
 (4) Three Confidential Assistants to the Administrator.
 (5) One Private Secretary to the Administrator.

(6) Director, Tobacco Division.
 (7) [Reserved]
 (8) Director, Conservation and Land Use Programs Division.
 (i) *Commodity Credit Corporation*.
 (1) The President.
 (2) The Executive Vice-President.
 (3) The Secretary.
 (j) *Federal Extension Service*. (1)-(2) [Reserved]
 (3) One Private Secretary to the Administrator.
 (k) *Soil Conservation Service*. (1) Administrator.
 (2) and (3) [Reserved]
 (4) One Private Secretary to the Administrator.
 (5) [Reserved]
 (6) [Reserved]
 (m) *Agricultural Marketing Service*.
 (1) The Administrator.
 (2) One Private Secretary to the Administrator.
 (3) Three Confidential Assistants to the Administrator.
 (n) *Agricultural Economics*. (1) The Director.
 (2) [Reserved]
 (3) One Private Secretary to the Director.
 (4) [Reserved]
 (5) [Reserved]
 (p) *Science and Education*. (1) The Director.
 (2) [Reserved]
 (q) *Food and Nutrition Service*. (1) Four Confidential Assistants to the Administrator.
 (r) [Reserved]
 (s) *Packers and Stockyards Administration*. (1) One Private Secretary to the Administrator.
 (t) *Rural Development Administration*. (1) Three Confidential Assistants to the Administrator.
 (2) One Private Secretary to the Administrator.

§ 213.3314 Department of Commerce.
 (a) *Office of the Secretary*. (1) Six Confidential Assistants to the Secretary.
 (2) Two Private Secretaries to the Secretary.
 (3) Two Confidential Assistants and one Private Secretary to the Under Secretary.
 (4) One Private Secretary to the Assistant Secretary for Economic Affairs.
 (5) One Confidential Assistant and one Private Secretary to the General Counsel.
 (6) One Private Secretary to the Deputy General Counsel.
 (7) One Chauffeur for the Secretary.
 (8) Three Confidential Assistants to the Assistant Secretary for Administration.
 (9) Two Congressional Liaison Officers.
 (10) One Private Secretary to the Deputy Under Secretary for Legislative Affairs.
 (11) One Special Assistant to the Assistant Secretary for Economic Affairs.
 (12) One Private Secretary to the Assistant to the Under Secretary.
 (13) and (14) [Reserved]
 (15) One Private Secretary to the Assistant Secretary for Administration.

(16) One Confidential Assistant to the Director, Office of Foreign Direct Investments.
 (17) Three Confidential Assistants to the Director, Office of Minority Business Enterprise.
 (18) [Reserved]
 (19) Special Assistant to the Secretary for Policy Development.
 (20) [Reserved]
 (21) Assistant to the Secretary.
 (22) Three Confidential Assistants to the Special Assistants to the Secretary for Policy Development.
 (23) [Reserved]
 (24) [Reserved]
 (25) One Private Secretary to the Assistant Secretary for Maritime Affairs.
 (26) Deputy Under Secretary for Legislative Affairs.
 (27) One private secretary to the Director, Office of Minority Business Enterprise.
 (28) [Reserved]
 (29) Two Special Assistants to the Assistant Secretary for Administration.
 (30) One Private Secretary to the Deputy Under Secretary for Legislative Affairs.
 (31) One Special Assistant to the Special Assistant to the Secretary for Public Affairs.
 (b) [Reserved]
 (c) [Reserved]
 (d) *Bureau of the Census*. (1) [Reserved]
 (2) One Confidential Research Assistant to the Director.
 (3)-(6) [Reserved]
 (e) [Reserved]
 (f) *National Bureau of Standards*.
 (1) Administrative Officer.
 (g) [Reserved]
 (h) *Patent Office*. (1) One Private Secretary (Confidential Assistant) to the Commissioner of Patents.
 (i)-(k) [Reserved]
 (l) *U.S. Travel Service*. (1) One Confidential Assistant to the Director.
 (2) [Reserved]
 (3) One Private Secretary to the Assistant Secretary for Tourism.
 (4) [Reserved]
 (m) *Office of the Assistant Secretary for Domestic and International Business*.
 (1) One Private Secretary and one Confidential Assistant to the Assistant Secretary.
 (2)-(6) [Reserved]
 (7) National Export Expansion Coordinator.
 (8) and (9) [Reserved]
 (10) Two Confidential Assistants to the Director, Bureau of Competitive Assessment and Business Policy.
 (11)-(14) [Reserved]
 (15) Commissioner General of the International Exposition on the Environment.
 (16) Deputy Assistant Secretary for Domestic and International Business.
 (17) Deputy Assistant Secretary for Domestic Commerce.
 (18) One Confidential Assistant to the Deputy Assistant Secretary for International Commerce.
 (19) One Private Secretary to the Deputy Assistant Secretary for Domestic and International Business.

(n) *Office of the Assistant Secretary for Science and Technology*. (1) Two Special Assistants to the Assistant Secretary for Science and Technology.
 (2) and (3) [Reserved]
 (4) [Reserved]
 (5) [Reserved]
 (6) *Office of the Assistant Secretary for Economic Development*.
 (1)-(5) [Reserved]
 (6) One Special Assistant to the Deputy Assistant Secretary for Economic Development Operations.
 (7) Director, Office of Congressional Relations.
 (8) One Special Assistant to the Deputy Assistant Secretary for Economic Development.
 (9) One Congressional Liaison Officer.
 (10) Director, Office of Public Affairs.
 (11) One Special Assistant to the Assistant Secretary.
 (r) *National Oceanic and Atmospheric Administration*. (1) One Private Secretary to the Administrator.
 (2) One Private Secretary (Confidential Assistant) to the Deputy Administrator.
 (3) [Reserved]
 (4) [Reserved]
 (t) *Social and Economic Statistics Administration*.—(1) One Confidential Assistant to the Administrator.

§ 213.3315 Department of Labor.
 (a) *Office of the Secretary*. (1) Two Special Assistants, and one Confidential Assistant to the Secretary of Labor.
 (2) One Private Secretary to the Under Secretary.
 (3) One Private Secretary to each Assistant Secretary of Labor who is appointed by the President.
 (4) [Reserved]
 (5) [Reserved]
 (6) One Assistant to each Assistant Secretary of Labor appointed by the President except the Assistant Secretary for Manpower.
 (7) One Private Secretary to the Executive Assistant to the Secretary.
 (8) Three Assistants to the Deputy Under Secretary for Legislative Affairs.
 (9) The Manpower Administrator.
 (10)-(14) [Reserved]
 (15) Deputy Under Secretary for International Labor Affairs.
 (16) One Confidential Assistant to the Deputy Under Secretary for International Affairs.
 (17)-(20) [Reserved]
 (21) One Assistant to the Deputy Under Secretary.
 (22) Three Special Assistants to the Assistant Secretary for Occupational Safety and Health Administration.
 (23) One Assistant to the Deputy Assistant Secretary for Occupational Safety and Health.
 (24) One Special Assistant to the Director, Office of Program Operations, Occupational Safety and Health Administration.
 (25) One Secretary to the Deputy Manpower Administrator.
 (26) One Secretary to the Public Affairs Director.
 (27) Two Secretaries to the Secretary.
 (28) [Reserved]

(29) Two Special Assistants to the Deputy Under Secretary for Legislative Affairs.

(30) [Reserved]

(31) Counselor to the Secretary.

(32) One Executive Assistant to the Counselor to the Secretary.

(33) Deputy Under Secretary for Legislative Affairs.

(34) One Office Management Assistant to the Counselor to the Secretary.

(35) One Executive Assistant to the Assistant Secretary for Occupational Safety and Health.

(36) One Special Assistant to the Deputy Assistant Secretary, Employment Standards Administration.

(37) One Special Assistant to the Associate Assistant Secretary for National Programs, Occupational Safety and Health Administration.

(b) *Office of the Solicitor.* (1) One Private Secretary to the Solicitor.

(2) [Reserved]

(c) [Reserved]

(d) *Manpower Administration.* (1) Not to exceed 10 positions of Manpower Development Officer and Manpower Development Specialist in the Division of Indian Manpower Programs when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities in the development and administration of comprehensive manpower training and employment programs.

(e) [Reserved]

(f) *Women's Bureau.* (1) One Private Secretary to the Director.

(2) Two Special Assistants to the Director.

(g) [Reserved]

(h) *Wage and Hour and Public Contracts Division.* (1) One Private Secretary to the Administrator.

(i) *Office of Federal Contract Compliance.* (1) One Special Assistant to the Director.

§ 213.3316 Department of Health, Education, and Welfare.

(a) *Office of the Secretary.* (1) [Reserved]

(2) Two Confidential Assistants to the Secretary.

(3) One Writer.

(4) [Reserved]

(5) One Confidential Secretary to the Under Secretary.

(6) Five Confidential Assistants to the Under Secretary.

(7)-(10) [Reserved]

(11) Five Assistants to the Secretary for Special Programs.

(12) [Reserved]

(13) Four Assistants to the Secretary.

(14) One Confidential Secretary to the Deputy Under Secretary.

(15) Two Private Secretaries to the Secretary.

(16) [Reserved]

(17) [Reserved]

(18) One Confidential Assistant for interdepartmental activities.

(19) Counselor.

(20) [Reserved]

(21) [Reserved]

(22) One Staff Assistant to the Assistant Secretary for Public Affairs.

(23)-(24) [Reserved]

(25) One Confidential Assistant to the Special Assistant to the Secretary for Health Policy.

(26)-(28) [Reserved]

(29) Four Special Assistants to the Assistant Secretary for Public Affairs.

(30) One confidential assistant to the Assistant Secretary for Public Affairs.

(31) Commissioner, Youth Development.

(32) Deputy Commissioner, Youth Development.

(33) One Confidential Secretary to the Deputy Under Secretary for Regional Affairs.

(b) [Reserved]

(c) *Office of Education.* (1) One Special Assistant to the Commissioner of Education.

(2)-(7) [Reserved]

(8) One Confidential Assistant to the Commissioner of Education.

(9)-(11) [Reserved]

(12) Assistant Commissioner for Public Affairs.

(d) [Reserved]

(e) [Reserved]

(f) *Office of the Assistant Secretary for Legislation.* (1) Two Special Assistants to the Assistant Secretary.

(2) One Confidential Secretary to the Deputy Assistant Secretary for Legislation.

(3) One Confidential Secretary to the Assistant Secretary.

(4) [Reserved]

(5) One Assistant to the Assistant Secretary.

(6) [Reserved]

(7) One Special Assistant to the Deputy Assistant Secretary for Legislation (Education).

(8) One Deputy Assistant Secretary for Legislation (Welfare).

(9) One Special Assistant to the Deputy Assistant Secretary for Legislation (Welfare).

(10) Four Special Assistants to the Deputy Assistant Secretary for Congressional Liaison.

(11) [Reserved]

(12) One Confidential Assistant to the Assistant Secretary.

(g) *Welfare Administration.* (1) The Commissioner.

(2) One Confidential Secretary to the Commissioner.

(h) *Office of the Assistant Secretary for Health and Scientific Affairs.*

(1)-(4) [Reserved]

(5) The Commissioner, Food and Drug Administration.

(6) Administrator, Health Services and Mental Health Administration.

(7) One Special Assistant to the Deputy Assistant Secretary for Population Affairs.

(8) One Special Assistant to the Administrator, Health Services Administration.

(9) [Reserved]

(10) [Reserved]

(11) Administrator, National Institutes of Health.

(1) *Administration on Aging.* (1) [Reserved]

(2) One Special Assistant to the Commissioner on Aging.

(j) [Reserved]

(k) *Office of the Assistant Secretary for Planning and Evaluation.* (1) One Confidential Secretary to the Assistant Secretary.

(2) [Reserved]

(3) [Reserved]

(4) One Special Assistant to the Assistant Secretary.

(5) One Assistant to the Assistant Secretary.

(6)-(9) [Reserved]

(10) One Special Assistant for Telecommunications.

(11)-(13) [Reserved]

(1) *Social Security Administration.*

(1) One Deputy Commissioner.

(2) [Reserved]

(3) One Confidential Assistant (interdepartmental activities) to the Commissioner.

(m) *Office of Consumer Affairs.*

(1) One Public Affairs Officer.

(2) One Director for Communications.

(3) One Director for Consumer Education.

(4) One Writer-Editor.

(5) One Confidential Assistant to the Special Assistant to the President for Consumer Affairs.

(n) *Office of the Assistant Secretary for Human Development.* (1) [Reserved]

(2) Director, Planning and Evaluation.

(3) One Special Assistant for Juvenile Delinquency to the Deputy Assistant Secretary for Youth and Student Affairs.

(4)-(5) [Reserved]

(6) One Special Assistant to the Deputy Assistant Secretary for Youth and Student Affairs.

(7) One Special Assistant for Student Affairs to the Deputy Assistant Secretary for Youth and Student Affairs.

(8) [Reserved]

(9) One Assistant to the Deputy Assistant Secretary for Consumer Services.

(10)-(12) [Reserved]

(13) One Confidential Assistant to the Executive Director, President's Council on Physical Fitness and Sports.

(14) [Reserved]

(o) *Social and Rehabilitation Service.*

(1) Administrator, Social and Rehabilitation Service.

(2) [Reserved]

(3) Two Confidential Assistants to the Administrator.

(4) Commissioner of Vocational Rehabilitation.

(5) One Confidential Assistant to the Commissioner of Vocational Rehabilitation.

(6) One Confidential Assistant to the Commissioner, Medical Services Administration.

(7) [Reserved]

(8) One Confidential Assistant (interdepartmental activities) to the Administrator.

(9) One Assistant Administrator for Policy Coordination.

(10) [Reserved]

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(11) One Confidential Assistant to the Commissioner, Assistance Payments Administration.

(p) *Office of the General Counsel.* (1) One Confidential Secretary to the General Counsel.

(2) [Reserved]

(3) One Special Assistant to the General Counsel.

(4) [Reserved]

(q) *Office of the Special Assistant to the Secretary for Civil Rights.* (1) One Special Assistant to the Special Assistant.

(2) One Confidential Secretary to the Special Assistant.

(3) One Assistant to the Special Assistant.

(4) Two Special Assistants for Special Groups.

(5) One Special Assistant for Public Affairs.

(6) [Reserved]

(7) Director, Office of Policy Communication.

(r) *Office of the Assistant Secretary for Education.*—(1) One Special Assistant to the Assistant Secretary.

(2) One Confidential Assistant to the Assistant Secretary.

(3) One Confidential Assistant to the Deputy Assistant Secretary for Education (Policy Communications).

(4) One Special Assistant to the Deputy Assistant Secretary for Education (Policy Communications).

(5) One Executive Assistant to the Assistant Secretary.

(6) One Staff Assistant for Special Projects to the Assistant Secretary.

§ 213.3317 *Overseas Private Investment Corporation.*

(a) One Chauffeur to the President.

(b) One Secretary to the President.

(c) [Reserved]

(d) [Reserved]

§ 213.3318 *Environmental Protection Agency.*

(a) *Office of the Administrator.* (1) Seven Special Assistants to the Administrator.

(2) and (3) [Reserved]

(4) Two Staff Assistants to the Administrator.

(5) One Secretary to the Deputy Administrator.

(6)–(9) [Reserved]

(10) One Program Advisor to the Special Assistant to the Administrator.

(11) One Information Assistant to the Administrator.

(b) *Office of Legislation.* (1) One Assistant Director for Congressional Affairs.

(2) Two Congressional Liaison Representatives.

(3) Two Staff Assistants to the Director.

(4) and (5) [Reserved]

(c) *Office of Public Affairs.* (1) [Reserved]

(2)–(3) [Reserved]

(4) Two Public Information Specialists.

(5) One Special Assistant to the Director.

(d) *Office of the Assistant Administrator for Enforcement and General Counsel.* (1) One Special Assistant to the Assistant Administrator.

(2) One Secretary to the Assistant Administrator.

(e) [Reserved]

(f) *Office of the Assistant Administrator for Air and Water Programs.* (1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) One Special Assistant to the Assistant Administrator (Intergovernmental Relations).

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

§ 213.3319 *Administrative Conference of the United States.*

(a) One Private Secretary to the Chairman.

§ 213.3320 *Inter-American Foundation.*

(a) Three Confidential Assistants to the President.

(b) [Reserved]

(c) One Private Secretary to the Vice President.

(d) [Reserved]

(e) One Administrative Aide to the President.

§ 213.3322 *Interstate Commerce Commission.*

(a) One Confidential Assistant to each Commissioner.

(b)–(c) [Reserved]

(d) One Confidential Assistant to the Managing Director.

(e) One Confidential Assistant to the Chairman.

(f) One Secretary to the Congressional Liaison Officer.

(g) [Reserved]

§ 213.3325 *The Tax Court of the United States.*

(a) One Private Secretary and one Technical Assistant for the Chief Judge and one Private Secretary and two Technical Assistants for each Judge.

§ 213.3326 *Office of Emergency Preparedness.*

(a) *Office of the Director.* (1) One Administrative Assistant to the Director.

(2) One Courier.

(3) Four Special Assistants to the Director.

(4) General Counsel.

(5) One Secretary to the Special Assistant to the Director (for oil and related energy problems).

(b) *Office of the Deputy Director.* (1) One Confidential Administrative Assistant to the Deputy Director.

(2) [Reserved]

(3) [Reserved]

(c)–(e) [Reserved]

(f) *Office of Liaison.* (1) [Reserved]

(2) Deputy Director.

§ 213.3327 *Veterans Administration.*

(a) *Office of the Administrator.*

(1) Four Confidential Assistants to the Special Assistant to the Administrator.

(2) The Deputy Administrator.

(3) The General Counsel.

(4) The Associate Deputy Administrator.

(5) [Reserved]

(6) Three Confidential Assistants to the Administrator.

(7) Three Confidential Assistants to the Executive Assistant to the Administrator.

(8) [Reserved]

(9) Director, National Cemetery System.

(10) Five Confidential Assistants to the Deputy Administrator.

(b) *Department of Veterans Benefits.*

(1) The Chief Benefits Director.

(2) One Confidential Assistant to the Chief Benefits Director.

§ 213.3328 *U.S. Information Agency.*

(a) Two Secretarial Assistants to the Deputy Director.

(b) One Confidential Assistant to the General Counsel.

(c) One Secretarial Assistant to the Director.

(d) One Secretary to the Director.

(e) [Reserved]

(f) [Reserved]

(g) Deputy Director (Policy and Plans).

(h) Associate Director (Policy and Plans).

(i) One Congressional and Legal Liaison Officer, Office of the General Counsel.

(j) One Special Assistant to the Assistant Director (Press and Publications).

(k) One Special Assistant to the Associate Director (Policy and Plans).

(1) One Special Assistant to the Assistant Director (Motion Picture and Television Service).

§ 213.3329 *Federal Power Commission.*

(a) Five Private Secretaries in the Office of the Chairman, one Confidential Assistant to the Chairman, one Private Secretary to each of three Commissioners, and one Confidential Assistant to each Commissioner.

(b) [Reserved]

(c) One Secretary to the Assistant Executive Director (Regulatory Information System and Administration).

(d) [Reserved]

(e) Two Private Secretaries to the Executive Director.

(f) Two Technical Assistants to each of four Commissioners.

(g)–(h) [Reserved]

(i) The Assistant Executive Director.

(j) [Reserved]

(k) One Private Secretary to the Assistant to the Chairman.

§ 213.3330 *Securities and Exchange Commission.*

(a)–(c) [Reserved]

(d) Two Confidential Assistants to the Chairman and one Confidential Assistant to each of the other four Members of the Commission.

(e) Two Administrative Aides to the Executive Director.

(f) One Secretary to the General Counsel.

(g) One Secretary to the Chief Accountant.

§ 213.3331 [Reserved]

§ 213.3332 Small Business Administration.

(a) One Deputy Administrator, Associate Administrator for Finance and Investment, Associate Administrator for Operations and the Associate Administrator for Procurement and Management Assistance.

(b) [Reserved]

(c) One Private Secretary to the Administrator.

(d) One Special Assistant and Director of Equal Opportunity and Compliance, Office of the Administrator.

(e) Three Congressional Relations Officers.

(f) Director, Office of Congressional Relations.

(g) One Advisory Councils Officer.

(h) [Reserved]

(i) One Confidential Assistant to the Deputy Administrator.

(j) One Special Assistant to the Associate Administrator for Procurement and Management Assistance.

(k) One Confidential Assistant to the Associate Administrator for Procurement and Management Assistance.

(l) [Reserved]

(m) One Executive Assistant to the Administrator.

(n) One Confidential Assistant to the Executive Assistant to the Administrator.

(o) One Congressional and Public Affairs Officer.

(p) Two positions of Special Assistant to the Assistant Administrator for Minority Enterprise.

(q) [Reserved]

(r) One Confidential Assistant (Secretary) to the Associate Administrator for Finance and Investment.

(s) One Confidential Assistant to the General Counsel.

(t) One Special Assistant to the Deputy Administrator.

(u) One Special Assistant to the Executive Assistant to the Administrator.

(v) One Staff Assistant to the Executive Assistant to the Administrator.

§ 213.3333 Federal Deposit Insurance Corporation.

(a) One Assistant to each member of the Board of Directors.

(b) One Confidential Assistant to the Board of Directors.

(c) General Counsel.

(d) One Special Assistant to the Chairman.

(e) Executive Assistant and Controller.

(f) [Reserved]

(g) One Special Assistant to the Director (Appointive).

§ 213.3334 Federal Trade Commission.

(a) Two Secretaries to the Chairman.

(b) Director of Information.

(c) One Secretary to the Director of Information.

§ 213.3337 General Services Administration.

(a) Office of the Administrator. (1) [Reserved]

(2) The Deputy Administrator.

(3) The Assistant Administrator.

(4) Three Confidential Assistants to the Assistant Administrator.

(5) Two Confidential Assistants to the Deputy Administrator.

(6) Four Confidential Assistants to the Administrator.

(7) [Reserved]

(8) Two Special Assistants to the Assistant Administrator.

(9) [Reserved]

(10) [Reserved]

(11) One Confidential Assistant to the General Counsel.

(12) [Reserved]

(13) Associate Administrator for Federal Management Policy.

(14) One Special Assistant to the Deputy Administrator.

(15) Director, Office of Preparedness.

(16) One Confidential Assistant to the Associate Administrator for Federal Management Policy.

(17) One Special Assistant to the Administrator.

(b) *Public Buildings Service.* (1) The Commissioner.

(2) Four Confidential Assistants to the Commissioner.

(c) *Federal Supply Service.* (1) The Commissioner.

(2) Two Confidential Assistants to the Commissioner.

(d) *National Archives and Records Service.* (1) The Archivist of the United States.

(2) [Reserved]

(e) [Reserved]

(f) *Property Management and Disposal Service.* (1) Commissioner.

(2) [Reserved]

(3) One Special Assistant to the Commissioner.

(g) *National Advisory Council on Economic Opportunity.* (1) One Special Assistant to the Chairman.

(2) [Reserved]

(h) *Automated Data and Telecommunications Service.* (1) [Reserved]

(2) The Commissioner.

§ 213.3338 Federal Communications Commission.

(a) One Special Assistant to the Chairman.

(b) One Secretary to the Legal Assistant to the Chairman.

(c) One Special Assistant to a Commissioner.

§ 213.3339 U.S. Tariff Commission.

(a) One Confidential Assistant to each Commissioner.

(b) One Administrative Assistant to the Chairman.

(c) One Administrative Assistant to the Executive Director.

(d) One Secretary to the Chairman.

(e) [Reserved]

§ 213.3340 Civil Aeronautics Board.

(a) One Administrative Assistant to each Member of the Board.

(b) One Secretary to each Member of the Board.

(c) Director of Information.

(d) One Special Assistant to the Chairman.

(e) One Secretary to the Special Assistant to the Chairman.

(f) One Secretary to the Director, Bureau of International Affairs.

§ 213.3341 National Labor Relations Board.

(a) One Private Secretary to the Chairman of the Board.

(b) One Confidential Assistant to each Board Member.

(c) [Reserved]

(d) Two Confidential Assistants to the General Counsel.

(e)-(g) [Reserved]

(h) One Chief Counsel to a Board Member.

§ 213.3342 Export-Import Bank of the United States.

(a) One Confidential Assistant to the President and Chairman.

(b) One Private Secretary to the First Vice-President.

(c) One Private Secretary to each of the three members of the Board of Directors.

(d) [Reserved]

(e) One Private Secretary to the Senior Vice President for Planning and Export Expansion.

(f)-(h) [Reserved]

(i) One Private Secretary to the Senior Vice President for Exporter Credits, Guarantees and Insurance.

(j) [Reserved]

(k) One Confidential Assistant to the General Counsel.

(l) One Secretary to the Special Assistant to the President and Chairman.

(m) One Secretary to the General Counsel.

§ 213.3343 Farm Credit Administration.

(a) Three Directors of Credit Services.

§ 213.3344 Occupational Safety and Health Review Commission.

(a) One Special Assistant to the Chairman.

(b) [Reserved]

(c) One Confidential Assistant to each member of the Commission other than the Chairman.

(d) One Confidential Assistant to the Chief Counsel to the Chairman.

(e) [Reserved]

§ 213.3345 Indian Claims Commission.

(a) One Private Secretary to each Commissioner.

§ 213.3346 Selective Service System.

(a) [Reserved]

(b) One Private Secretary to the General Counsel.

(c) [Reserved]

(d) One Private Secretary to the Deputy Director of Selective Service.

(e) and (f) [Reserved]

(g) One Private Secretary to the Director of Selective Service.

(h) [Reserved]

§ 213.3348 National Aeronautics and Space Administration.

(a) One Secretary to the Administrator.

(b) One Secretary to the Deputy Administrator.

(c) One Secretary to each of the following: The Associate Administrator for Manned Space Flight, the Associate Ad-

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ministrator for Advanced Research and Technology.

- (d) Associate Administrator.
- (e) [Reserved]
- (f) [Reserved]
- (g) Associate Administrator for Manned Space Flight.
- (h) Associate Deputy Administrator.
- (i) Deputy Associate Administrator.
- (j) General Counsel.
- (k) One Staff Assistant to the Special Assistant to the Assistant Administrator for Institutional Management (Executive Recruiting).
- (l) One Secretary to the Special Assistant to the Assistant Administrator for Institutional Management.
- (m) One Secretary to the Associate Administrator.
- (n) One Secretary to the Associate Administrator for Center Operations.
- (o) One Special Assistant to the Director of the Occupational Medicine and Environmental Health Division.
- (p) Associate Administrator for Aeronautics and Space Technology.
- (q) Associate Administrator for Space Science.
- (r) Associate Administrator for Applications.
- (s) Associate Administrator for Tracking and Data Acquisition.
- (t) Associate Administrator for Center Operations.

§ 213.3349 Panama Canal Company.

- (a) Secretary.

§ 213.3350 Foreign Claims Settlement Commission of the United States.

- (a) [Reserved]
- (b) [Reserved]
- (c) One Private Secretary to the Chairman.

§ 213.3351 [Reserved]

§ 213.3354 Federal Home Loan Bank Board.

- (a) Two Secretaries to the Chairman of the Board.
- (b) Two Secretaries to Board Members.
- (c) One Assistant to a Board Member.
- (d) [Reserved]
- (e) Director, Office of Communications.
- (f)-(g) [Reserved]
- (h) One Secretary to the General Counsel.
- (i) [Reserved]
- (j) One Secretary to the Director, Office of Economic Research, and Adviser to the Board.

§ 213.3355 The Renegotiation Board.

- (a) One Special Assistant to the Chairman and one Special Assistant to each of the other four Renegotiation Board Members.
- (b) One Secretary to the Chairman.
- (c) One Secretary to each of the four Board Members.

§ 213.3356 Commission on Civil Rights.

- (a) One Confidential Secretary to the Staff Director.
- (b) [Reserved]
- (c) [Reserved]

(d) One Confidential Secretary to the Deputy Staff Director.

(e) One Special Assistant to the Staff Director.

(f) One Director, Congressional Liaison.

§ 213.3357 National Credit Union Administration.

- (a) One Secretary to the Deputy Administrator.
- (b) One Public Information Officer.

§ 213.3359 ACTION.

- (a) Three Special Assistants to the Associate Director for Domestic and Anti-Poverty Operations.
- (b) One Chauffeur to the Director.
- (c) One Deputy Associate Director for Citizens Placement.
- (d) One Deputy Associate Director for SCORE/ACE.
- (e) One Deputy Associate Director for Older American Programs.
- (f) One Executive Assistant to the Director.
- (g) One Confidential Aide to the Director.
- (h) One Staff Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
- (i) One Special Assistant for Communications to the Associate Director for Domestic and Anti-Poverty Operations.
- (j) [Reserved]
- (k) One Deputy Associate Director for ACTION Education Programs.
- (l) [Reserved]
- (m) Director, Evaluation Division, Office of Policy and Program Development.
- (n) Director, Policy Management Division, Office of Policy and Program Development.
- (o) [Reserved]
- (p) One Confidential Secretary to the Deputy Associate Director (Domestic and Anti-Poverty Operations).
- (q) One Staff Assistant to the Director.

§ 213.3360 Consumer Product Safety Commission.

- (a) One Secretary (Stenography) to one Commissioner and one Staff Assistant to one Commissioner.
- (b) One Special Assistant for External Affairs to each of three Commissioners.
- (c) One Special Assistant for Internal Affairs to each member of the Commission.

§ 213.3364 U.S. Arms Control and Disarmament Agency.

- (a) One Private Secretary to the Director.
- (b) One Private Secretary to the Deputy Director.
- (c) One Private Secretary to each Assistant Director appointed by the President (four positions).
- (d) One Public Affairs Adviser.
- (e) The General Counsel.
- (f) One Private Secretary to the General Counsel.
- (g) One Private Secretary to the Deputy Assistant Director, Economic Affairs Bureau.
- (h) One Staff Assistant to the Special Assistant to the Director.

(i) One Congressional Assistant to the General Counsel.

(j) One Confidential Assistant to the General Counsel.

(k) One Private Secretary to the ACDA Representative to the Mutual and Balanced Force Reduction Talks.

§ 213.3367 Federal Maritime Commission.

- (a) One Confidential Assistant to each of three Commissioners.
- (b) One Private Secretary to the Chairman, one Private Secretary to each Commissioner, one Private Secretary to the General Counsel, and one private Secretary to the Managing Director.

§ 213.3368 Agency for International Development.

- (a) Office of the Administrator. (1) [Reserved]
- (2) One Confidential Assistant (Private Secretary) to the Administrator.
- (3) One Chauffeur for the Administrator.
- (4) One Private Secretary to the Deputy Administrator.
- (b) [Reserved]
- (c) Office of the General Counsel. (1) One Private Secretary to the General Counsel.
- (2) The General Counsel.
- (d) [Reserved]
- (e) Office of the Assistant Administrator for Legislative Affairs.
- (1)-(4) [Reserved]
- (5) One Congressional Liaison Officer.
- (f) [Reserved]

§ 213.3372 [Reserved]

§ 213.3374 [Reserved]

§ 213.3376 Appalachian Regional Commission.

- (a) One Special Assistant to the Federal Cochairman and one Special Assistant to his Alternate.
- (b) One Private Secretary to the Federal Cochairman and one Private Secretary to his alternate.

§ 213.3377 Equal Employment Opportunity Commission.

- (a) Four Special Assistants to the Chairman.
- (b) One Special Assistant and one Secretary to each Member of the Commission.
- (c) Two Secretaries to the Chairman.
- (d) One Secretary to each of two Special Assistants to the Chairman.
- (e) One Public Information Officer.
- (f) One Special Assistant to each of three members of the Commission.
- (g) One Special Assistant to the Vice Chairman.

§ 213.3382 National Foundation on the Arts and the Humanities.

- (a) One Executive Secretary to the Chairman, National Endowment for the Arts.
- (b) One Assistant to the Chairman, National Endowment for the Arts.
- (c) One Staff Assistant to the Chairman, National Endowment for the Arts.
- (d) One Assistant for Cultural Affairs (interdepartmental activities).

(e) One Special Assistant to the Chairman of the National Endowment for the Humanities.

(f) One Director of Planning and Management, National Endowment for the Arts.

(g) One Special Assistant for Management Policy to the Director for Planning and Management, National Endowment for the Arts.

(h) One Congressional Liaison Officer, National Endowment for the Arts.

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* (1) [Reserved]

(2) One Executive Secretary to the Secretary.

(3)-(8) [Reserved]

(9) Three Special Assistants to the Under Secretary.

(10) One Private Secretary to the Assistant Secretary for Legislative Affairs.

(11) [Reserved]

(12) One Special Assistant to the Secretary.

(13)-(16) [Reserved]

(17) Federal Insurance Administrator.

(18) [Reserved]

(19) Two Special Assistants to the General Counsel.

(20) Deputy Assistant Secretary for Equal Opportunity.

(21) Deputy General Counsel.

(22) [Reserved]

(23) One Private Secretary to the Deputy Assistant Secretary for Legislative Affairs.

(24) One Staff Assistant to the Under Secretary.

(25) Two Staff Assistants to the Assistant to the Secretary (Public Affairs).

(26) Four Senior Assistants for Legislative Affairs.

(27) Eight Assistants for Legislative Affairs.

(28)-(30) [Reserved]

(31) One Special Assistant to the Secretary, one Administrative Aide and one Secretary to the Special Assistant.

(32)-(33) [Reserved]

(34) One Chauffeur to the Secretary.

(35) One Administrative Aide to the Executive Assistant to the Secretary.

(36) One Private Secretary to the Assistant to the Secretary (Public Affairs).

(37) One Private Secretary to the Deputy Under Secretary for Field Operations.

(38)-(41) [Reserved]

(42) One administrative aide to an Assistant Director, Urban Program Coordination.

(43) [Revoked]

(44) One Deputy Under Secretary for Field Operations.

(45) [Revoked]

(46) Four Public Information Officers, Office of the Assistant to the Secretary for Public Affairs.

(47) Three Public Information Specialists, Office of the Assistant to the Secretary for Public Affairs.

(48) One Special Assistant to the Deputy Under Secretary for Field Operations.

(49) One Director, Executive Secretariat.

(50) One secretary to the Secretary.

(51) One Staff Assistant to the Assistant to the Secretary for Programs for the Elderly and Handicapped.

(52) One Secretary to the Special Assistant to the Deputy Under Secretary for Field Operations.

(53) Assistant to the Secretary (Public Affairs).

(54) One Deputy Assistant to the Secretary for Programs for the Elderly and the Handicapped.

(55) One Staff Assistant to the Director, Executive Secretariat.

(56) One Special Assistant to the Assistant to the Secretary for Public Affairs.

(57) Deputy Under Secretary for Management.

(b) *Office of the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Administration Commissioner.* (1) One Private Secretary to the Assistant Secretary-Commissioner.

(2) One Deputy Assistant Secretary-Commissioner.

(3) Two Assistants to the Commissioner (Special Projects).

(4) [Reserved]

(5) [Reserved]

(6) One Staff Assistant to the Assistant Secretary-Commissioner.

(7) [Reserved]

(8) [Reserved]

(9) President, Government National Mortgage Association.

(10) One Special Assistant to the President, Government National Mortgage Association.

(11) One Assistant (special projects) to the Assistant Secretary-Commissioner.

(12) One Special Assistant to the Assistant Secretary-Commissioner.

(13) One Private Secretary to the Deputy Assistant Secretary-Commissioner.

(14) One Private Secretary to the President, Government National Mortgage Association.

(c) *Office of Assistant Secretary for Housing Management.* (1) One Private Secretary to the Assistant Secretary.

(2)-(3) [Reserved]

(4) Four Special Assistants to the Assistant Secretary.

(5) Three Staff Assistants to the Assistant Secretary.

(6)-(8) [Reserved]

(d) *Office of Assistant Secretary for Community Planning and Management.* (1) One Private Secretary to the Assistant Secretary.

(2) [Reserved]

(3) Four Special Assistants to the Assistant Secretary.

(4)-(9) [Reserved]

(10) One Staff Assistant to the Deputy Assistant Secretary.

(11) Deputy Assistant Secretary for Community Planning and Development.

(e) [Reserved]

(f) *Office of the Assistant Secretary for Equal Opportunity.* (1) One Private Secretary to the Assistant Secretary.

(2) One Private Secretary to the Deputy Assistant Secretary.

(3) Two Special Assistants to the Assistant Secretary.

(4) One Staff Assistant to the Deputy Assistant Secretary.

(5) Two Confidential Assistants to the Assistant Secretary.

(6) One Executive Assistant to the Assistant Secretary.

(g) *Office of the Assistant Secretary for Research and Technology.* (1) One

(1) [Reserved]

(2) One Special Assistant to the Assistant Secretary.

(3) [Reserved]

(4) One Special Assistant for Research Dissemination.

(h) *Office of the Administrator, Federal Disaster Assistance Administrator.* (1) One Private Secretary to the Administrator.

(i) *Office of the Assistant Secretary for Policy Development and Research.*

(1) One Executive Assistant to the Assistant Secretary.

(2) One Secretary to the Deputy Assistant Secretary for Policy Development.

(3) One Special Assistant to the Assistant Secretary.

(4) One Deputy Assistant Secretary for Research and Demonstration.

(j) *Community Development Corporation.*

(1) Administrative Aide to the President/General Manager.

(2) One Staff Assistant to the General Manager.

(k) *Office of New Communities Administration.*

(1) Confidential Secretary to the Administrator.

(2) Special Assistant to the Administrator.

§ 213.3386 Regional Commissions, Public Works and Economic Development Act of 1965.

(a) One Special Assistant to the Federal Cochairman of each Regional Commission established under the Public Works and Economic Development Act of 1965.

(b) One Special Assistant to the Alternate Federal Cochairman of each Regional Commission established under the Public Works and Economic Development Act of 1965.

(c) One Private Secretary to the Federal Cochairman of each Regional Commission established under the Public Works and Economic Development Act of 1965.

(d) One Private Secretary to the Alternate Federal Cochairman of each Regional Commission established under the Public Works and Economic Development Act of 1965.

§ 213.3388 Federal Energy Administration.

(a) *Office of the Administrator.* (1) One Secretary to the Administrator.

(2) One Special Assistant to the Administrator.

(b) *Office of the Deputy Administrator.* (1) One Staff Assistant to the Deputy Administrator.

(c) *Office of Public Affairs.* (1) The Director.

(2) [Reserved]
 (d) *Office of Congressional Affairs.*
 (1) One Special Assistant, Congressional Affairs. (2) Four Staff Assistants, Congressional Affairs.
 (e) *Office of the General Counsel.*
 (1) One Secretary to the Deputy General Counsel.
 (f) [Reserved]
 (g) *Office of the Assistant Administrator for Conservation and Environment.* (1) One Confidential Assistant (Secretary) to the Assistant Administrator.
 (2) One Special Assistant to the Assistant Administrator.
 (h) *Office of the Assistant Administrator for Management and Administration.*
 (1) Deputy Assistant Administrator.
 (i) *Office of the Assistant Administrator for International Energy Affairs.*
 (1) One Confidential Assistant (Secretary) to the Assistant Administrator.
 (j) *Office of The Assistant Administrator for Energy Resource Development.*
 (1) One Executive Assistant to the Assistant Administrator.

§ 213.3394 Department of Transportation.
 (a) *Office of the Secretary.* (1) [Reserved]
 (2) One Special Assistant to the Secretary.
 (3) Two Confidential Secretaries to the Secretary.
 (4) [Reserved]
 (5) [Reserved]
 (6) One Confidential Secretary to the General Counsel.
 (7) One Confidential Secretary to the Under Secretary of Transportation.
 (8) [Reserved]
 (9) One Confidential Secretary to the Assistant Secretary for Systems Development and Technology.
 (10) Special Assistant for Special Projects.
 (11) Two Special Assistants to the Under Secretary of Transportation.
 (12) One Chauffeur to the Secretary.
 (13) One Chauffeur to the Under Secretary.
 (14) [Reserved]
 (15) One Special Assistant to the Deputy Under Secretary of Transportation.
 (16) [Reserved]
 (17) Six Congressional Liaison Officers, Office of the Director of Congressional Affairs.
 (18) Director, Office of Congressional Relations.
 (19) One Deputy Director, Office of Congressional Relations.
 (20) [Reserved]
 (21) Two Special Assistants to the Assistant Secretary for Policy, Plans, and International Affairs.
 (22) One Confidential Secretary to the Assistant Secretary for Safety and Consumer Affairs.
 (23)-(25) [Reserved]
 (26) One Public Information Assistant to the Director, Office of Public Affairs.
 (27) [Reserved]
 (28) One Confidential Secretary to the Director, Office of Congressional Relations.

(29) Director, Office of Public Affairs.
 (30) One Special Assistant to the Assistant Secretary for Safety and Consumer Affairs.
 (31)-(32) [Reserved]
 (33) One Secretary to a Special Assistant to the Secretary.
 (34) [Reserved]
 (35) [Reserved]
 (36) One Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs.
 (37) [Revoked]
 (38) One Staff Assistant to the Executive Secretary to the Secretary.
 (39) One Secretary to the Assistant Secretary for Congressional and Intergovernmental Relations.
 (40) One Secretary to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations.
 (41) One secretary to the Special Assistant to the Under Secretary.
 (42) [Reserved]
 (43) One Staff Assistant to the Under Secretary.
 (44) Deputy Under Secretary.
 (45) One Executive Resources Manager to the Deputy Under Secretary.
 (46) [Reserved]
 (47) One Intergovernmental Liaison Officer.
 (b) *National Transportation Safety Board.* (1) One Administrative Assistant to each of two Board Members.
 (2) One Confidential Secretary to each of the five Board members.
 (3) One Confidential Secretary to the General Manager.
 (4) One Legislative Affairs Officer, Office of the General Manager.
 (5) One Program Analysis Officer.
 (6) One Administrative Assistant to the Chairman.
 (c) [Reserved]
 (d) *Federal Highway Administration.*
 (1) Deputy Administrator.
 (2) [Reserved]
 (3) [Reserved]
 (e) *Federal Railroad Administration.*
 (1) [Reserved]
 (2) One Special Assistant to the Deputy Administrator.
 (3) Deputy Administrator.
 (4) One Confidential Secretary to the Administrator.
 (5) One Public Information Officer.
 (6) One Secretary to the Deputy Administrator.
 (7) One Special Assistant to the Administrator.
 (8) One Secretary to the Special Assistant to the Administrator.
 (f) *Urban Mass Transportation Administration.* (1) [Reserved]
 (2) One Confidential Secretary to the Administrator.
 (3) Deputy Administrator.
 (4) One Secretary to the Deputy Administrator.
 (g) *St. Lawrence Seaway Development Corporation.* (1) One Special Assistant to the Administrator.
 (2) One Confidential Secretary to the Administrator.
 (3) One Confidential Secretary to the Assistant Administrator.

(h) *Federal Aviation Administration.*
 (1) One Private Secretary to the Administrator.
 (2) One Special Assistant to the Administrator.
 (3)-(6) [Reserved]
 (7) General Counsel.
 (i) *National Highway Traffic Safety Administration.* (1) Deputy Administrator.
 (2) One Private Secretary to the Administrator.
 (3) One Special Assistant to the Administrator.
 (4) One Public Information Officer.

§ 213.3399 Temporary Boards and Commissions.
 (a) *Cost-of-Living Council and Related Organizations.* (1) [Reserved]
 (2) [Reserved]
 (3) [Reserved]
 (4) One Special Assistant to the Director, Cost of Living Council.
 (b) *American Revolution Bicentennial Administration.* (1) Director.
 (2) Deputy Executive Director for Program Development and Coordination.
 (3) Deputy Executive Director for Communications and Field Services.
 (4) Deputy Executive Director for Finance and Administration.
 (5) One Staff Assistant (Secretary) to the Administrator.

[FR Doc.74-30091 Filed 12-27-74;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Areas Quarantined; Correction

In FR Doc. 74-29330 appearing at page 43611 in the issue of Tuesday, December 17, 1974, in the third column, third complete paragraph the third and fourth lines should be interchanged.

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

GRANT AND LOAN PROGRAM

Adoption of Proposed Regulations

On November 13, 1974, there was published in the FEDERAL REGISTER (39 FR 40122) a notice of proposed rulemaking amending Title 13 of the Code of Federal Regulations by amending Parts 301, 302, 303, 304, 305, 306, 307 as well as by adding Parts 308 and 312.

The purpose of these amendments and additions is to implement new program authorities and legislative amendments contained in Pub. L. 93-423 and to make technical changes to clarify existing language and procedures.

The amendments:
 Change eligibility of title I areas to title IV.
 Establish operating grants for health projects.

Allow economic development districts to contain one redevelopment area instead of requiring two.

Provide that a project benefiting a redevelopment area may be located in an economic development district outside of a redevelopment area.

Qualify uninhabited Indian reservations, trust or restricted Indian-owned land for designation as a redevelopment area.

Additionally, Part 306 is restated and includes procedures to make available working capital loans and working capital guarantees and lease guarantees as authorized under section 202 of the Act.

Part 307 is amended by adding a new Subpart D to expand economic development planning capabilities of States and sub-states as authorized under section 302 of the Act.

A new Part 308 is added which describes procedures by which eligible recipients may receive assistance under title IX of the Act pursuant to a plan to alleviate economic adversity. Grants may be used for public facilities, public services, business development, planning, unemployment compensation, rent supplements, mortgage payment assistance, research, technical assistance, training, relocation of individuals, and other appropriate assistance.

Part 312 is added and describes program as provided under section 304 of the Act which grants funds to States in accordance with a prescribed formula. Funds are authorized to supplement projects under titles I, II, and IV of the Act, and also may be used for "first-dollar" assistance when funds are unavailable under titles I, II, and IV of the Act for projects that comply with these titles.

Interested persons were invited to submit written comments on or before December 9, 1974. A number of comments were received from States and interested organizations. All comments were carefully considered and a number of changes were made in response thereto. The principal changes are discussed below.

The language of Part 307, Subpart D, § 307.52(d) and § 307.55(b) has been revised to indicate a distinction between the uses of funds under section 301(b) and section 302 of the Public Works and Economic Development Act. The language of § 307.54(b)(3) has been revised to clarify the intended cooperation between State planning and substate planning efforts.

Part 308 § 308.6(a) has been amended to provide a requirement that plans under title IX of the Act shall be consistent with planning goals and objectives developed under section 302 of the Act. A definition for "public services" has been added to § 308.22. Section 308.26(a) has been modified to provide that the use of title IX assistance for unemployment compensation must be shown to have a significant relationship to the economic adjustment of the area and would only be available when unemployment compensation assistance is not otherwise available. Section 308.27(b) has been amended to provide that title IX as-

sistance would not be available for relocation of unemployed workers and families unless such assistance is not available under the Comprehensive Employment and Training Act of 1973. Section 308.51 has been amended to reduce the period for program reporting following the conclusion of assistance from three years to one year.

Sections 312.5 and 312.6 have been amended to provide that the Assistant Secretary shall provide with respect to basic grant and loan assistance under section 304 of the Act the same determinations of compliance and the same services of construction management as applicable to supplementary grants under section 304 of the Act.

The Assistant Secretary for Economic Development has determined that the public interest would be best served by making these regulations effective immediately. Rising levels of unemployment and other problems of economic adjustment require in the national interest that the subject programs of assistance be implemented with minimum delay. Therefore, deferral of the effective date under 5 USC 553(d) is determined to be inapplicable and these regulations shall become effective on December 30, 1974.

Accordingly, with these changes and additions, the amendments to Chapter III of Title 13 of the Code of Federal Regulations are adopted as set forth below:

PART 301—ESTABLISHMENT AND ORGANIZATION

1. Section 301.2 is amended by deleting the definition of "Title I Area"; by changing the definitions of "Designated Area", "Disaster Area", "Economic Development District", and "Qualified Area"; and by adding a new definition "Section 302 Planning Grants".

§ 301.2 Definitions.

"Designated Area" means any area or center which has been determined by the Assistant Secretary pursuant to sections 401 or 403 of the Act as eligible to apply for financial assistance.

"Disaster Area" means areas designated under title IV of the Act and designated by the President under the Disaster Relief Act of 1970 (Pub. L. 91-606) or Disaster Relief Act of 1974 (Pub. L. 93-288). The disaster area shall remain such for as long a period as it retains both EDA and Disaster designations, and such concurrent designations have not exceeded 1 year in duration.

"Economic Development District" means a geographic area composed of adjoining and economically related areas which are of proper size to permit effective economic planning, including at least one redevelopment area and one or more economic growth center(s) and which has been designated by the Assistant Secretary.

"Qualified Area" means an area which meet the criteria of the Act for designation as "redevelopment area".

"Section 302 Planning Grants" means economic development planning grants authorized under section 302 of the Act.

2. Section 301.20 is amended by deleting the period at the end of paragraph (a)(1) and (b) and inserting "and parts of economic development districts.", and adding a new paragraph (c) to read as follows:

§ 301.20 Public works and development facility grants.

(c) Under section 304 of the Act the Secretary is authorized to make grants to the States for the purpose of supplementing or making grants and loans authorized under titles I, II, and IV of the Act.

3. Section 301.21 is revised to read as follows:

§ 301.21 Loans and guarantees.

(a) Loans are authorized for public works, public service, and development facility projects in redevelopment areas and parts of economic development districts.

(b) Loans are authorized for industrial and commercial purposes in redevelopment areas and parts of economic development districts.

(c) Guarantees are authorized for loans made to private borrowers by private lending institutions and for rental payments of loans in redevelopment areas and parts of economic development districts.

4. A new § 301.23 is added to read as follows:

§ 301.23 Special Economic Development and Adjustment Assistance.

Grants may be made to States, political subdivisions of States, redevelopment areas, economic development districts, and Indian tribes to meet special needs related to existing or threatened long term unemployment or low family income levels and arising from economic dislocation. Such grants may be used for public facilities, public services, business development, planning, unemployment compensation, rent supplements, mortgage payment assistance, research, technical assistance, training, relocation of individuals, and other appropriate assistance.

5. Section 301.42 is amended by amending paragraphs (b), (6) and (8) to read as follows:

§ 301.42 Economic Development Regional Offices.

(b) * * *
(6) The Public Works Division, subject to general guidance from the Director, Office of Public Works, advises Regional Office personnel, Economic Development Representatives, appropriate community officials and the public of

possible uses of public works and development facilities assistance to meet the objectives of the Act; * * *

(8) The Technical Support Division, subject to general guidance by the Director of the Office of Public Works with respect to public works activities, provides the Public Works, Planning and Technical Assistance Divisions, and Economic Development Representatives, with financial and technical guidance needed to assist prospective applicants in the planning of acceptable applications; applies established criteria in the engineering and financial evaluation of proposed projects except Business Development projects; prepares special conditions for Public Works projects; initiates * * *

PART 302—DESIGNATION OF AREAS

6. Section 302.4 is amended by adding a new paragraph (b) (1) (i) to read as follows:

§ 302.4 Standards for designation on the basis of Indian lands.

(b) * * *
(1) * * *

(i) The Assistant Secretary upon consultation with the Secretary of Interior or an appropriate State agency may designate under this section uninhabited Federal or State Indian reservations or trust or restricted Indian-owned land areas where such designation would permit assistance to Indian tribes, with a direct beneficial effect on the economic well-being of Indians.

7. Section 302.11 is redesignated § 302.12.

8. A new Section 302.11 is added to read as follows:

§ 302.11 Standards for designation on the basis of substantial unemployment.

The Assistant Secretary shall designate as redevelopment areas those areas which the Secretary of Labor determines, on the basis of average annual available unemployment statistics, were areas of substantial unemployment during the preceding calendar year. Substantial unemployment for the purpose of this section is defined as an annual average unemployment rate of 6 percent or more.

Subpart C [Deleted]

9. Subpart C in its entirety is deleted.

10. Subpart D in its entirety is redesignated Subpart C.

§ 302.40 [Amended]

11. Section 302.40 is amended by deleting the reference "§ 302.11 and § 302.30," and inserting "§ 302.12" in paragraph (a).

§ 302.41 [Amended]

12. Section 302.41 is amended by deleting the reference "§ 302.11" and inserting "§ 302.12" in paragraph (b) (3).

§ 302.50 [Amended]

13. Section 302.50 is amended by deleting the reference "§ 302.11" and inserting "§ 302.12" and by deleting the reference "and § 302.30" in paragraph (a) (1).

PART 303—ECONOMIC DEVELOPMENT DISTRICTS

14. Section 303.1 is amended to read as follows:

§ 303.1 Authorization of economic development districts.

(a) The Assistant Secretary may authorize, at the request of the Governor(s) of the State or States, the delineation of economic development district (hereinafter district) boundaries as a prerequisite to designation of an economic development district and as a prerequisite to the provision of planning grants, Subpart B of Part 307 of this Chapter.

(b) Authorization of delineation may be made:

(1) Where the State or States after analyzing economic and social relationships among the various redevelopment area counties proposed to EDA a district boundary delineation.

15. Section 303.2 is amended by amending paragraph (b) to read as follows:

§ 303.2 Designation of economic development districts.

(b) Where the proposed district contains at least one redevelopment area.

16. A new § 303.9 is added to read as follows:

§ 303.9 Notice to Regional Commission.

Each economic development district designated by the Assistant Secretary under § 303.2 shall as soon as practicable after September 27, 1974, or after its designation provide a copy of the district OEDP to the appropriate regional commission established under title V of the Act, if any part of such district is located within such a region, or to the Appalachian Regional Commission established under the Appalachian Regional Development Act of 1965, if any part of such district is located within the Appalachian region.

17. Section 303.21 is amended by correcting the first sentence to read as follows:

§ 303.21 Economic development center project characteristics.

Projects in economic development centers shall have one or more of the following characteristics:

PART 304—OVERALL ECONOMIC DEVELOPMENT PROGRAM

§ 304.1 [Amended]

18. Section 304.1 is amended by deleting the words "title I area," in paragraph (a) and (b).

§ 304.8 [Amended]

19. Section 304.8 is amended by deleting the words "and title I" in paragraph (a) and by deleting the words "or title I area" in paragraph (b).

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

20. Section 305.3 is amended by adding a new paragraph (c) to read as follows:

§ 305.3 Direct grants for Public Works projects.

(c) In the case of a project to be located in an economic development district pursuant to section 403(j) of the Act such project shall meet the requirements as would be applicable to the project if it were located wholly within the redevelopment area for which it is determined to be a direct and substantial benefit.

21. Section 305.5 is amended by deleting the words "Title I" in the first sentence of paragraphs (b) (3) (v), (vi), and (vii); by amending paragraph (b) (3) (iv); and by adding a new paragraph (d) to read as follows:

§ 305.5 Supplementary grants.

(b) * * *
(3) * * *

(iv) Projects located in areas designated under title IV of the Act, which areas have been designated by the President of the United States under the Disaster Relief Act of 1970 (Public Law 91-606) or the Disaster Relief Act of 1974 (Public Law 91-288), provided: (a) Such areas retain both EDA and disaster designations, and (b) Such concurrent designation has not exceeded one year in duration. 80

(d) The applicable maximum grant rate for projects located in economic development districts pursuant to section 403(j) of the Act shall be the same as the grant rates for the redevelopment areas for which such projects are determined to be a direct and substantial benefit.

22. Section 305.6 is amended by designating the first paragraph "(a)", redesignating the second paragraph "(1)", redesignating the third paragraph "(2)", and by adding a new paragraph (b) to read as follows:

§ 305.6 Ten percent bonus supplemental grants.

(b) Projects assisted in districts outside redevelopment areas pursuant to section 403(j) of the Act shall not be eligible for 10 percent bonus grants under this section.

23. A new § 305.7 is added to read as follows:

§ 305.7 Operating grants for health facilities.

(a) The Assistant Secretary pursuant to section 102 of the Act may make grants for the operation of any health

project approved for assistance under title I of the Act after the 27th day of September, 1974. Such assistance will be available only in the most needy circumstances.

(b) Grants made under this section may be made up to 100 per centum of the estimated cost of the first fiscal year of operation, and up to 100 per centum of the deficit in funds otherwise available for operation of the facility during the second fiscal year of operation. No grant shall be made under this section unless the operation of the facility will be conducted under efficient management practices designed to obviate operating deficits as determined by the Secretary of Health, Education, and Welfare. No grant shall be made for the second fiscal year of operation unless the operating agency has adopted a plan for the funding of operations on a permanent basis which is satisfactory to the Secretary of Health, Education, and Welfare.

24. Section 305.23 is amended by adding a new paragraph (f) to read as follows:

§ 305.23 Loan requirements.

(f) In the case of a project to be located in an economic development district pursuant to section 403(j) of the Act, such project shall meet the requirements as would be applicable to the project if it were located wholly within the redevelopment area for which it is determined to be a direct and substantial benefit.

25. Section 305.58 is redesignated § 305.59 and a new § 305.58 is added to read as follows:

§ 305.58 Architect/Engineer Agreements.

The architect/engineer agreement shall provide for all services required by the recipient for the planning, design and construction phase administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA), may be used where the grantee does not have standard procurement documents.

26. Section 305.68 is amended by numbering the first paragraph (a) and by adding a paragraph (b) to read as follows:

§ 305.68 Architect/engineer services as eligible project costs.

(a) * * *

(b) It is EDA policy to require the utilization of fixed price or cost-ceiling contracts. Agreements allowing compensation to the architect/engineer based on a percentage-of-construction-cost type of fee contract are generally not acceptable.

27. Part 306 is revised to read as follows:

PART 306—BUSINESS DEVELOPMENT PROGRAM

Subpart A—Financial Assistance for Industrial and Commercial Purposes

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Subpart B—Project Closing and Servicing

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|--------|--|
| 306.31 | Project closing. |
| 306.32 | Project servicing. |
| 306.33 | Liquidation and administration of loans, guarantees and evidences of indebtedness. |

AUTHORITY: Sec. 701, Pub. L. 89-136 (August 26, 1965) (42 U.S.C. 3211), 79 Stat. 570 and Department of Commerce Organization Order 10-4, April 1, 1970 (35 FR 5970).

Subpart A—Financial Assistance for Industrial and Commercial Purposes

§ 306.1 Purpose.

(a) The purpose of this subpart is to set forth policies and procedures under which qualified applicants may obtain financial assistance under section 202 of the Act. The following types of financial assistance are available for business development projects:

- (1) Direct loans or purchase of evidences of indebtedness to provide fixed assets.
- (2) Direct loans to provide for working capital.
- (3) Guarantees of loans to private borrowers by private lending institutions to provide fixed assets.
- (4) Guarantees of loans to private borrowers by private lending institutions to provide working capital.
- (5) Guarantees of rental payments of leases from qualified lessors for buildings (including the underlying land) and equipment.

(b) These programs are administered by EDA for the prime purpose of achieving the long-range economic development goals of the Act—creating jobs, increasing incomes, and diversifying local economies—and not to underwrite commercial ventures.

(c) Lease guaranty assistance is primarily available to increase the business development opportunities in distressed areas of large cities, particularly in special impact areas, where vacant build-

ings are available. This program is intended to be a supplement to, and not a duplication of, the Small Business Administration's lease guaranty program.

(d) Direct working capital loans will only be made if other sources of working capital are not available.

§ 306.2 Eligible Applicants.

(a) Applications for loans shall be made by the borrower; ordinarily applications for lease guarantees shall be made by the lessee. Where a loan or lease guarantee is requested, additional information must be supplied by the lender or lessor. It is not the policy of EDA to approve a lease guaranty without a known lessee. However, the Assistant Secretary may waive this policy. In request for waiver, the Assistant Secretary will consider, among other things:

- (1) The purpose for which the lease guaranty is sought.
- (2) Whether the lessor is a public or quasi-public body.
- (3) Whether the lessor is seeking the lease guarantee on a solely speculative basis.

(b) EDA may participate with commercial lease guarantors provided all provisions of the Act and Regulations are met.

(c) Private lending institutions include, but are not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banking organizations, and venture capital investment companies. Any of the following entities or enterprises may be eligible as an applicant:

- (1) A business enterprise including sole proprietorship, partnership, or corporation.
- (2) A non-profit organization or association.
- (3) A State or political subdivision thereof including municipalities and all agencies, instrumentalities and quasi-public corporations or authorities created by a State or political subdivision thereof.
- (4) Indian tribes.

§ 306.3 Types of Financial Assistance.

The Assistant Secretary is authorized to approve financial assistance, on terms and conditions he shall establish, to:

(a) Provide fixed assets for eligible applicants by either making direct loans or by guaranteeing loans or leases to enable the applicant to purchase, develop or lease commercial or industrial land and/or facilities.

(1) The following are the normal kinds of fixed asset costs allowed by EDA:

- (i) Land acquisition and improvements.
- (ii) Machinery and/or equipment (including also furniture and fixtures).
- (iii) Construction costs for new buildings.
- (iv) Rehabilitation costs for abandoned or unoccupied buildings.
- (v) Alteration, conversion and enlargement costs for existing buildings.

(2) Where fixed assets are leased, lease costs cannot be included as an eligible item for a direct fixed asset loan. Under the lease guaranty program, lease rentals must be reasonable in relation-

ship to the actual costs to the lessor.

(b) Provide working capital for eligible applicants by either making direct loans or by guaranteeing loans by qualified private lending institutions. The following are the normal kinds of working capital items for which EDA may make or guarantee a working capital loan:

(1) Start-up costs including employee training, pre-production sales efforts, and the acquisition of raw materials and supplies.

(2) Cash to meet the borrower's obligations to pay those costs and expenses incident to the conduct of current business such as wages, salaries, material purchases, rents, utilities, taxes, interest and the like and to pay current liabilities other than those incurred in the acquisition of non-current assets or in the reduction of shareholder's equity.

(c) EDA will not ordinarily guarantee revolving type or open-end working capital loans.

(d) The substance of all loan or lease agreements which EDA is being asked to guarantee must be approved by the Assistant Secretary prior to issuance of the guarantee.

(e) Guaranteed loans or leases may be assigned, but such assignments may only be made with the prior approval of the Assistant Secretary.

(f) Lease guarantees by EDA shall extend only to rental payments and not other obligations created under the lease.

§ 306.4 Location.

A business development project must be located within a redevelopment area or an economic development center. It may also be located within a non-eligible part of an economic development district provided it can be shown that the project will provide a substantial direct benefit to a redevelopment area within such district.

§ 306.5 Limitation.

The requirements stated in Part 309 of this chapter are pertinent to business development projects as appropriate.

§ 306.6 Requirement of approval by State or political subdivision.

No application for a business development project will be approved by EDA until such application is approved by an agency or instrumentality of the State or political subdivision in which the project is to be located.

(a) Such agency or instrumentality must be directly concerned with the problems of economic development in such State or political subdivision.

(b) Such approval must include a determination that the project is consistent with the redevelopment area's approved OEDP, except areas which will be designated under the criteria of Section 401(a)(4) of the Act. Redevelopment areas or economic development districts which do not have a currently approved OEDP will also be evaluated if:

(1) The area will be designated within a reasonable period of time, or

(2) Appropriate steps have been taken to secure the approval by EDA of an OEDP.

(c) Such approval of an agency or instrumentality shall be in a form satisfactory to EDA.

(d) Such approval may be waived by EDA if the application is to provide working capital for the operation of a commercial or industrial project whose land and/or facilities have been purchased, developed, or leased with the aid of EDA financial assistance.

§ 306.7 Alleviation of Unemployment.

A business development project must reasonably provide more than temporary alleviation of unemployment or underemployment within the area in which the project will be located.

§ 306.8 Financing.

A business development applicant must provide evidence that other financing is not available on terms and conditions which, in the opinion of the Assistant Secretary, would permit completion and/or the successful operation or accomplishment of the project. Such evidence will include:

(a) Letters from at least two qualified lending institutions declining to finance any part of the project or in the case of direct EDA loans, to participate in EDA's share of the financing.

(1) In the event only one qualified lending institution is located in the project area or lends in the project area, a letter from one qualified lending institution will be sufficient.

(2) In the event no qualified lending institutions are located in the project area or lend in the project area, applicant's certification to that effect will be sufficient.

(b) In the case of financial assistance involving direct EDA loans for fixed assets, the applicant must include evidence that no qualified lending institution will assist in the project financing other than on a first lien basis.

(c) In the case of guaranteed loans, the applicant must include evidence that no direct financing is available from private lending institutions, as above, and that the lending institution making the loan would not assist in the project financing without the EDA guaranty. In addition, no working capital loan will be guaranteed which is secured by a prior lien on the same assets which secure an EDA fixed asset loan or guarantee.

(d) Evidence that other Federal financial assistance is not available to the project.

(e) In the event that the applicant is a large corporation which would normally have its own funds available or appears to have access to non-Federal funds sufficient to finance the project, such corporation must certify that it would not locate the proposed project within the area if it were not for the benefits of EDA's financial assistance.

(f) In the case of financial assistance involving a direct loan by EDA, the applicant must also show that other lenders will not participate with EDA in its loan.

§ 306.9 Repayment.

No loan or loan guarantee application shall be approved unless the Assistant Secretary has determined there is a reasonable assurance that the borrower can repay such loan. It is the policy of EDA to determine that there is reasonable assurance of repayment of rents under a lease before approving a lease guarantee. However, in the event the prospective lessee is not known prior to approval of a lease guarantee, such prospective lessee must be approved by EDA. The approval of a lessee shall be based, but not limited to, a reasonable assurance that the lessee can repay the remaining rents under the lease.

(a) The applicant shall provide, at a minimum, the following financing information to permit the Assistant Secretary to make this determination unless the Assistant Secretary determines certain or all of such information is not necessary.

(1) Current audited financial statements of the applicant, including balance sheets, an income statement with auditors' footnotes, and supporting statements for applicant's three most recent fiscal years.

(2) Audited consolidated financial statements and income statements, with auditors' footnotes, of parent and subsidiaries for the three most recent fiscal years.

(3) Audited financial statements including balance sheets, income statements, and auditors' footnotes, of all affiliated companies for the three most recent fiscal years.

(4) Most recent interim financial statements of applicant, its parent and subsidiaries, certified to by officers of the respective companies and maintained current during EDA loan processing.

(5) Projected pro forma balance sheets, income statements, cash flows and supporting statements of the applicant quarterly from the date of the latest interim financial statements to the date of the commencement of project operations.

(6) Projected pro forma balance sheet at the commencement of project operations, and pro forma balance sheets, income statements, cash flow and supporting statements of the applicant monthly, for the first twelve months of project operations and annually for the three succeeding twelve-month periods. Such statements and balance sheets should reflect applicant's ability to repay debt principal out of earnings commencing within the first three years of operations.

(b) In addition, the applicant shall provide as much of the following non-financial information as EDA determines is necessary to allow the Assistant Secretary to substantiate the pro forma projections:

(1) Estimates, firm quotations, receipts, contracts, orders, invoices, leases, or equivalent documentation from architects, engineers, contractors, subcontractors, materialmen, suppliers, lessors

or others involved in the sale, lease or construction of fixed assets, if any, for applicant's project including schedules of implementation.

(2) Back-up information regarding applicant's operating costs, including projected employment by job category and applicable wage rates, cost and availability of raw materials and energy.

(c) Applicants are also required to provide EDA with general information about management capabilities, including resumes of top management, and marketing plans.

(d) Applicants will also supply such additional back-up information as EDA may require regarding other collateral securing EDA's financial assistance, such as appraisals and valuations of non-project assets and guarantees.

§ 306.10 Term.

The term of the financial assistance should be consistent with the purpose for which it will be used and the collateral position of EDA.

(a) The term of a fixed asset loan or guaranty or lease guaranty will ordinarily not be greater than the weighted average useful life of the project fixed assets.

(b) The term of a working capital loan, whether direct or guaranteed, generally should not exceed five (5) years and the loan should be amortized in full during its term.

(c) The term of a guaranty of a lease will generally not be less than five (5) years.

(d) No financial assistance including renewals or extensions may be made for a period exceeding twenty-five years from the date of the note evidencing a loan, the date of purchase of evidences of indebtedness, or the date of a guaranteed lease. In the case of lease guaranties, the lease itself may extend beyond twenty-five years but the Government's liability for guaranteed payments shall cease after the twenty-fifth year.

§ 306.11 Interest and Fees.

Financial assistance under this subpart shall bear interest or involve fees at the following rates:

(a) Direct fixed asset loans and evidences of indebtedness purchased by EDA will bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of one percent, plus such additional charge, if any, toward covering other costs of the program as the Assistant Secretary may determine to be consistent with its purpose.

(b) Interest charges for direct working capital loans shall be computed based on the interest rate for direct fixed asset loans and purchases of evidences of indebtedness, plus such additional charge as the Assistant Secretary determines is reasonable in view of the higher risk and

more limited collateral associated with working capital loans.

(c) Interest on guaranteed loans by private lending institutions must be at not more than their prevailing rates, and must be reasonable with respect to the project.

(d) EDA may charge a fee on loan and loan and lease guarantees to be determined by the Assistant Secretary.

§ 306.12 Allowable project costs for projects involving fixed assets.

Allowable project costs for EDA fixed asset projects (loans, guaranteed loans, and lease guaranties) may include the cost of land, building, machinery and equipment, and reasonable contingency reserves to cover the possibility of cost increase during processing of the application and during construction, if applicable.

(a) In arriving at the total fixed asset cost of the project, EDA cannot, under the Act, include any item which is considered as properly allocable to working capital.

(b) Other types of costs which cannot be financed include: leasehold interests or lease-purchase obligations (except as such may be financed indirectly via an EDA lease guaranty), mineral reserves, patents, organization expenses, pre-production costs, research and development expenses, goodwill, trade or brand names, franchises and licenses.

(c) Land included in the total project cost may include the following:

(1) Land acquisition costs, including reasonable real estate commission if paid by borrower.

(2) Cost of engineering fees, surveys, plats, title insurance, recording fees and legal fees incurred in connection with acquisition of land.

(3) Costs of nondepreciable grading and site improvements, as well as costs of necessary depreciable land improvements.

(4) Costs of soil tests and test borings.

(5) Preparation of plans and specifications.

(d) Buildings included in total project cost may include the following:

(1) Building acquisition costs, including reasonable real estate commission if paid by purchaser.

(2) Cost of constructing, altering, converting, rehabilitating, or enlarging buildings.

(3) Engineering, architectural, and legal fees paid in connection with the preparation of plans and specifications and the acquisition, construction, etc., of buildings and building equipment.

(4) Insurance during construction, including hazard insurance, performance, labor and material bonds.

(e) Machinery and equipment included in total cost may include the following:

(1) Machinery acquisition costs including cost of delivery and reasonable costs of installation.

(2) Engineering, architectural and legal fees paid in connection with ma-

chinery selection, design, acquisition and installation.

(3) Insurance during installation including hazard insurance, performance, labor and material bonds.

(f) In projects involving EDA direct fixed asset loans, land, buildings, machinery and equipment already owned by the applicant lien-free may be included in project costs and be treated as an in-kind equity injection and credited against the 10 percent equity required by the Act; provided they will be an integral part of the expanded operation. However, such in-kind equity credit will generally be limited to the lesser of (1) appraised fair market value, or (2) net book value (cost less accumulated depreciation) in the hands of the applicant, its principals, parent, subsidiaries, or affiliates; provided, however, that such credit as may be allowed for fixed assets owned by the applicant may not be used to provide the 5 percent required by the Act to come from a local government or non-profit organization. In-kind injections of fixed assets owned by a local government or non-profit organization may be credited toward the required local participation (State, political subdivisions or agencies thereof, and community or area organizations) to the extent of appraised fair market value. If the local government or non-profit organization does not own fixed assets, its required 5 percent share must be put into the project in cash regardless of whether the community share is waived according to § 306.17 or not. The granting of in-kind equity credit for fixed assets does not apply to any form of EDA financial assistance other than the direct fixed asset loan program.

(g) Other eligible project costs may include:

(1) Interest on interim construction financing and other necessary costs of obtaining financing, with prior concurrence of EDA.

(2) Sales and use taxes incurred in the acquisition of project fixed assets.

(3) Other costs contributing directly to the value of project fixed assets, with prior concurrence of EDA, but not including the cost of feasibility studies.

(h) Adequate contingency reserves are a necessary part of the provision for project costs in order to avoid the problem of incurring an overrun in total expenditures for the project and thereby forcing a renegotiation of the loan commitment. The contingency amount should be established according to the anticipated length of time for project construction, terms of contract, type of machinery and equipment, and technological and other developments which might be expected to increase cost.

(1) Contingency reserves for building construction and machinery and equipment should be established at a reasonable figure and justified by the applicant, depending upon the characteristics of the specific project.

(2) Construction bids or estimates and machinery and equipment quotes should allow for sufficient time and remain valid during the estimated period of project

processing or until execution of firm contracts. These quotes should not be over sixty days old when the application is submitted to EDA.

(3) Contingency reserves for land must be considered in the event an option to purchase, earnest money agreement, or real estate contract provides for a renegotiation of terms prior to project funding. The applicant will be required to provide evidence of ability to acquire the project land and any contractual arrangement therewith must be carefully reviewed in reference to establishment of a contingency for increased land costs above the project valuation at time of submission of the application.

(4) Allowable project costs for lease guaranty projects may include all reasonable rents, including attendant costs and taxes and other expenses as are customary with respect to comparable property.

§ 306.13 Amount of Assistance.

EDA financial assistance is limited to the following percentages of project cost:

(a) Direct fixed asset loan assistance shall never exceed 65 percent of the aggregate project cost. In the event other Federal aid is available and used to pay part of the project cost, such other Federal aid shall be subtracted from the aggregate project cost and the remainder shall be the aggregate cost for the purposes of business development fixed asset loan.

(b) Direct working capital loan assistance may be in an amount sufficient to include all of the applicant's allowable working capital needs.

(c) Lease guarantys shall never exceed 90 percent of the remaining rental payments required by the lease, provided no rental payments which accrue later than twenty-five years from the effective date of the guaranty shall be covered by the guaranty.

(d) No working capital guaranty shall at any time exceed 90 percent of the amount of the outstanding unpaid balance of the working capital loan by the private lending institution.

(e) No fixed asset loan guaranty shall at any time exceed 90 percent of the amount of the outstanding unpaid balance of the fixed asset loan by the private lending institution.

§ 306.14 Equity capital requirements.

The Act requires a minimum equity contribution only for direct fixed asset loan projects. However, all projects should be supported by equity capital to the following extent:

(a) Not less than 15 percent of the aggregate cost of a direct fixed asset loan project (which may include amounts required by § 306.15) shall be provided as equity capital or a standby loan.

(b) In projects involving EDA guarantys of fixed asset loans by a private lending institution, the guaranteed loan to applicant-beneficiary should not exceed 85 percent of the total cost of fixed assets to be purchased. The remaining 15 percent of the total project cost should be provided as equity capital. EDA's

guaranty will be limited solely to the fixed asset loan; an EDA required standby loan is considered a form of equity capital.

(c) An application for either an EDA guaranteed working capital loan or an EDA direct working capital loan will not ordinarily be approved until the applicant is in operation of its facilities. In projects involving EDA direct fixed asset loans, guaranteed fixed asset loans or lease guarantys, all project financing including applicant's equity must ordinarily be disbursed before the guaranteed working capital loan may be disbursed by the lender. Working capital loans will be restricted to working capital needs and cannot be diverted into fixed or other noncurrent assets. Applicants should have existing net working capital equal to not less than 15 percent of its total working capital needs. The remaining working capital requirements can then be met with either an EDA guaranteed working capital loan or, where justified, with an EDA direct working capital loan. If the applicant is in a negative net working capital position or has less than 15 percent of its total working capital needs, it should bring its net working capital up to the required level by obtaining cash either from equity capital or a standby loan.

(d) In EDA lease or lease-purchase guaranty projects, the applicant should have expended an amount equal to not less than 15 percent of the value of the assets to be leased. Such expenditures shall be for either leasehold improvements or the types of fixed assets which can be allowable project costs under § 306.12. If applicant is not paying for needed leasehold improvements or fixed assets, its working capital should be augmented instead. Cash for the expenditures required by this subsection shall be obtained by applicant either from equity capital or a standby loan.

(e) Where funds are provided from a standby loan:

(1) Such loan shall be repayable in no shorter period of time and at no faster rate of amortization than the financial assistance provided by EDA and subordinate in rights of repayment to EDA.

(2) If such loan is secured, the security must be subordinate and inferior to the lien or liens securing the financial assistance provided by EDA.

§ 306.15 Required community share in direct fixed asset loan projects.

Not less than 5 percent of the aggregate cost of a direct fixed asset project shall be supplied by:

(a) State or any agency or instrumentality thereof.

(b) A political subdivision of a State or any agency or instrumentality thereof; or

(c) A community or area organization which is nongovernmental in character.

§ 306.16 Indian tribes.

Projects involving financial participation by Indian tribes are not required to meet the provisions of § 306.15. In

such case, the 5 percent shall be supplied by the borrower as equity or by standby loan subject to the provision of § 306.14 (e).

§ 306.17 Waiver of community share.

The Assistant Secretary may waive all or part of the 5 percent community share of the aggregate cost of a direct fixed asset loan project which is required by § 306.15 if he determines that all or part of the community share is not reasonably available to the project because of the economic distress of the area or for other good cause. The portion of the community share thus waived may be supplied by the applicant or by such other non-Federal sources as may be reasonably available to the project.

(a) In determining whether all or part of the community share is not reasonably available because of the economic distress of the area, the Assistant Secretary may consider the following factors:

(1) The extent of economic distress of the redevelopment area or district, as measured by unemployment, underemployment and income levels.

(2) The nature and extent of the funds reasonably available to comprise the community share, as made known by the community.

(3) The extent of local support for the project, as manifested by previous bona fide community efforts to assist it financially.

(4) The extent of previous bona fide, broadly based efforts to obtain local financial support for community economic development activities generally.

(b) In determining whether all or part of the community share of the aggregate project cost is not reasonably available for other good cause, the Assistant Secretary may consider, in addition to the factors listed above, the following situations as representing sufficient good cause for waiver:

(1) Where the financial assistance is requested to replace, rehabilitate, or expand the facilities of an industrial or commercial enterprise already existing in the locality, and local investors can show a need to conserve their funds in order to encourage the establishment of new industry which will broaden the economic base of the community; or

(2) Where the Assistant Secretary determines that a bona fide community fund raising drive either has been made or, if made, would be unsuccessful in raising the necessary funds for the project, and provided that the total prior community investment in projects already assisted by either the Area Redevelopment Administration, Small Business Administration or EDA is equal to or exceeds the following amounts:

(i) Redevelopment areas eligible for 50 percent public works grants—\$10 per area resident;

(ii) Redevelopment areas eligible for 60 percent public works grants—\$7 per area resident;

(iii) Redevelopment areas eligible for 70 percent public works grants—\$5 per area resident; or

(iv) Redevelopment areas eligible for 80 percent public works grants—\$3 per area resident.

§ 306.18 EDA security with respect to assets of the applicant.

EDA's financial assistance will usually be secured either directly or indirectly by liens or assignments of rights in assets of the applicant as follows:

(a) In order to encourage financial participation in a direct fixed asset loan project by other lenders and investors and to the extent necessary, the EDA loan may be repayable only after other loans made in connection with the project have been repaid in full. The lien position of EDA may be subordinate and made inferior to lien or liens securing other loans made in connection with the project.

(b) In projects involving EDA direct working capital loans, EDA will normally obtain collateral such as liens on inventories, receivables and/or fixed assets. Such liens may be subordinate only to existing liens of record.

(c) In projects involving EDA guaranteed loans, the lending institution ordinarily will be required to maintain a collateral position, to which EDA is subordinated, in the assets of the borrower and/or principals of the borrower such as by taking liens on inventories, receivables, and/or fixed assets. However, such liens if taken on fixed assets will not be placed by EDA subordination into a prior position to liens securing loans previously made or guaranteed under the ARA or EDA programs.

(d) In lease guaranty projects and other projects involving leased assets, EDA will require such collateral as is appropriate.

(e) Regardless of the type of EDA financial assistance extended, full personal guarantees of principals of applicant and/or related corporate guaranties by closely held corporate applicants or by the parent corporation of subsidiary corporate applicants, secured by collateral where deemed necessary, will be ordinarily required. Likewise, cross guarantees of related corporations will be required when deemed necessary to properly support the EDA financial assistance.

(1) Guarantees should be understood to provide not only additional collateral benefits, but also to provide the necessary personal involvement of the principals required to provide assurance of continuity of job opportunities provided by the project.

(2) Applicants will provide, in the case of personal guarantors, current (not over ninety days old at the time of filing) personal financial statements signed by both husband and wife and disclosing community and individual assets and indebtedness.

(f) In addition to the above types of security, EDA may also require security in the form of assignment of patents and licenses, the acquisition of hazard and other forms of insurance, and such other additional security as the Assistant Sec-

retary determines is necessary to support EDA's exposure.

(g) Applications submitted by closely held corporations, partnerships, or proprietorships dependent for their continuing success on certain individuals will ordinarily be expected to provide and assign to EDA life insurance on these key men.

(h) In projects involving EDA guaranteed financial assistance (and assigned institutions or of leases, if the lender or lessor secured by the EDA guaranty is also secured by a third party with respect to its exposure remaining above the EDA guaranteed portion, the guaranty agreement shall be modified to provide that any interest which the secured party would receive in the collateral taken for the financial assistance (and assigned to EDA upon redemption) shall not be subrogated to the third party's interest if the third party is a principal or equity shareholder in the applicant until all of the applicant's indebtedness to EDA is paid in full. The purpose of this provision is to ensure that those persons responsible through ownership for the operation of a project do not share in the proceeds of collateral until EDA recovers fully against all its exposures.

(i) Nothing contained in this section shall affect the subordinate lien position required for standby loans under § 306.14.

§ 306.19 Special considerations for projects located in economic development centers or in non-designated areas of economic development districts.

(a) Financial assistance approved for projects located in economic development centers shall be subject to the following restrictions and limitations:

(1) The project must be consistent with a currently approved OEDP for the economic development district.

(2) The amount of the business development loan approved must be reasonably related to the size, population, and economic needs of such district.

(3) The project must enhance the economic growth potential in such district or result in additional long-term employment opportunities commensurate with the amount of financial assistance extended.

(b) Financial assistance approved for projects located in non-designated areas in economic development districts shall be subject to the following restrictions and limitations:

(1) The project will be of substantial direct benefit to a redevelopment area within the district.

(2) The project must be consistent with a currently approved OEDP for the district.

(3) A finding by the State(s), or any agency, instrumentality, or local political subdivision thereof that the project is consistent with the district OEDP.

§ 306.20 Project financing.

Each project will be evaluated with the intent of obtaining a financing structure which demonstrates a minimum EDA participation in project financing to accomplish the project with

maximum reliance on equity and junior lenders. Moreover, an EDA participation of \$10,000 per job will ordinarily be the maximum acceptable for any particular project. In calculating the EDA participation per job, indirect jobs created in other parts of the local economy will not be considered. Seasonal jobs will be converted into full time job equivalents.

§ 306.21 Financing information.

The following information shall be included with respect to all participants, other than EDA, in project financing:

(a) A written commitment or firm letter of intent from each participating lending institutions stating amount, interest rate, repayment terms, collateral and lien position it will require, or such other evidence as EDA may require to assure availability of funds. EDA requires that the proposed project financing upon which it bases a decision to lend remain firm, in order to obviate the lengthy reanalysis required by financing alterations after EDA acceptance of an application.

(b) A written commitment by the applicant to provide equity funds, stating both the source and actual availability of funds and/or assets to be injected, and the names of the principal shareholders or owners.

(c) Where applicable, a written commitment of the participating local development organization or public body, where applicable, stating amount of commitment, interest rate, repayment terms, collateral and lien position required.

(d) Where applicable a determination of the source and actual availability of local development organization funds or assets to be injected.

(e) A statement of any special conditions attaching to the financing arrangements proposed.

§ 306.22 Restrictive covenants on operations.

Conditions for the granting of EDA financial assistance for new ventures, closely held corporations and all marginally capitalized applicants shall include restrictive covenants similar to those required by private financial lending institutions except in cases in which modification or omission of one or more of them can be clearly shown not to jeopardize reasonable assurance of repayment of the financial assistance and the long-term continuity of the project's employment. Restrictive covenants for well-capitalized business expansion borrowers will be tailored to the financial status of individual companies.

§ 306.23 Indian reservation projects.

In view of the inherent problems of collateralizing financial assistance for projects to be located on Indian reservations due to the inability to obtain mortgages on such lands, project funding should afford EDA maximum collateral protection without undue hardship on the borrower. A lease agreement will enable EDA, in the event of a default, to reassign the right of occupancy to a third

party and thereby improve the chances for continued operation of the project and the preservation of collateral value.

§ 306.24 Feasibility reports.

(a) All applications for financial assistance for new ventures involving a total project costing \$1 million or more shall be accompanied by a technical and economic feasibility report from an acceptable independent consultant. New venture projects of less than \$1 million must be accompanied by sufficient documentation to permit a determination by EDA of technical and economic feasibility.

(b) In projects which are expansions of a successful existing business or projects sponsored by a capable and financially sound parent organization, the requirement for a technical and economic feasibility report from an acceptable independent consultant may be waived by EDA. However, the prospective borrower shall provide all technical and economic information necessary for EDA to properly evaluate the application.

(c) An economic feasibility report from an acceptable independent consultant in connection with projects involving tourism and recreation facilities will be required if the cost of the proposed project exceeds \$150,000. Evidence must be submitted that the proposed facility will provide services or have special attributes that tend to induce a net increase in tourist visits to the area and is part of a larger, area-wide program expected to attract tourists and provide jobs in the area. In cases where total project investment is less than the above minimums, sound judgment may require an independent feasibility study in light of the specific nature of the project.

Subpart B—Project Closing and Servicing

§ 306.31 Project closing.

EDA projects are closed and disbursed in accordance with detailed policies and procedures as set forth in the Office of Business Development Guide to Loan Closing. The major activities engaged in during this period are as follows:

(a) At the time an application for EDA financial assistance is approved by the Assistant Secretary, he also approves the primary document on which the financial assistance will be given; either a loan agreement or a guaranty agreement. The signed agreement is offered to the appropriate party for its acceptance, at which time a binding legal agreement between EDA and the applicant or guaranteed party takes effect. A preclosing conference will be arranged by the Regional Director, whenever the applicant requests one, to discuss the terms and conditions contained in the agreement and how these terms and conditions can be met.

(b) Immediately after acceptance, the Regional Office shall arrange with the applicant for the preparation, review, and signing of the promissory note, or lease, collateral documents, and other documents necessary for the financial assistance.

(c) Periodic inspections of construction of projects involving fixed assets will be made by the Regional Office to determine the satisfactory progress of the project and application of monies toward implementation of the project as set forth in the agreement. Particular attention will be paid to financial or management changes which might adversely affect the project. The Regional Office will, for example, determine whether there is: conformance with plans and specifications, proper installation of equipment, sufficiency of funds for the completion of the project, substantiation of costs incurred, proper labor costs for compliance with the Davis-Bacon Act, and EDA approval of contract change orders.

(d) Disbursements of direct EDA loans will be made after a request by the borrower, to the Regional Office, on EDA Form ED-270, "Borrower's Certification of Current Status and Request for EDA Action." The disbursement will be based on costs incurred as certified to EDA at such time or times as the Regional Office shall require. Certifications as to project costs are made on EDA Form ED-268 "Status of Payments on Project Accounts." Certifications as to the status of project construction for projects involving fixed assets are made on EDA Form ED-269, "Business Loan Project Inspection and Certification of Project Acceptability." Requests for disbursement shall be supported by such documents as the Regional Office may require; for example, but not limited to, copies of unpaid invoices to be paid from disbursement; copies of fully paid invoices together with lien waivers, where appropriate; and copies of cancelled checks. The Regional Office may withhold 10% of all requested disbursements on all project costs except land costs. When the Regional Office determines that the status of the project is such as would place EDA's interest in jeopardy, the Regional Office may withhold a greater percentage after stating in writing to the borrower the basis for such decision. The borrower shall, on EDA Form ED-265, "Disbursement of Business Loan Funds," acknowledge receipt of each disbursement made by EDA.

(e) Requests by an applicant for a modification of the terms on which its EDA financial assistance has been extended shall be submitted to the Regional Director, supported by such documentation and facts as would justify the requests.

§ 306.32 Project servicing.

EDA personnel will make periodic visits to projects until such time as the financial assistance has been fully repaid. Such personnel will consult with employees and officers of the applicant and obtain such information as is necessary to determine the employment levels as well as the soundness of its financial condition and management. Requests by an applicant for a modification of the terms on which its EDA financial assistance has been extended shall be submitted to the Regional Director, supported by such documentation and facts as would justify the requests.

§ 306.33 Liquidation and administration of loans, guarantees and evidences of indebtedness.

In the event that the Assistant Secretary determines it is necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased under the Act, the Assistant Secretary may:

(a) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions as he shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by him in connection with financial assistance extended under the Act.

(b) Collect or compromise all obligations assigned to or held by him in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection.

(c) Take any and all other actions determined by him to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guarantys made or evidences of indebtedness purchased under the Act.

PART 307—TECHNICAL ASSISTANCE, RESEARCH, AND INFORMATION

28. Part 307 is amended by adding a new Subpart D to read as follows:

Subpart D—State and Local Economic Development Planning Grants

Sec.

- 307.50 Purpose.
- 307.51 Objectives.
- 307.52 Eligible applicants.
- 307.53 Submission of applications.
- 307.54 Application requirements.
- 307.55 Grant limitations.
- 307.56 Annual reports.
- 307.57 Coordination.
- 307.58 Requirements.

Subpart D—State and Local Economic Development Planning Grants

§ 307.50 Purpose.

The purpose of this subpart is to set forth regulations pursuant to which eligible applicants may apply for and receive direct grants for economic development planning under section 302 of the Act.

§ 307.51 Objectives.

(a) A primary objective of planning grants is to provide and strengthen the economic development planning capabilities of States. Another objective of such grants is to strengthen the economic planning capabilities of substate level planning entities.

(b) The emphasis of economic development planning shall be directed toward the reduction of chronic unemployment and the enhancement of low income levels.

(c) Any overall State economic development planning shall be a part of a comprehensive planning process that involves public officials and private citizens in analyzing local economies, defining development goals, determining

project opportunities and formulating and implementing development programs. This planning process shall be conducted cooperatively by the State, cities and other political subdivisions and economic development organizations (including redevelopment areas and economic development districts) located in whole or in part within the State, and shall incorporate the goals and objectives of local and economic development district planning.

(d) Planning grants for cities, other political subdivisions, and sub-State planning and development organizations shall be used to develop plans to reduce unemployment and increase incomes.

(e) Additionally, grants may be made to economic development districts to enable them to:

(1) Provide technical assistance other than by grant to local governments within the districts.

(2) Carry out review procedures required under Title IV of the Intergovernmental Cooperation Act of 1968, if designated by the State to conduct this review.

§ 307.52 Eligible applicants.

Eligible applicants are:

(a) The Governor of a State or an agency designated by him, and the Chief Executive Officer of the District of Columbia, Puerto Rico, Virgin Islands, Guam and American Samoa.

(b) Chief Officer of governing bodies of sub-State planning units, economic development districts, and redevelopment areas.

(c) Chief executive of cities and counties meeting EDA eligibility criteria and not located wholly within larger multi-county planning and development organizations receiving planning funds under section 301 of the Act.

(d) Chief Executives of cities, counties, and redevelopment areas in multi-county organizations receiving funds under section 301 of the Act whose applications are endorsed by the Boards of the multi-county organizations, and who demonstrate exceptional need for planning assistance, beyond that provided through the multi-county organization, for planning activities other than on going administrative support, the preparation of original OEDP documents, updated OEDP documents or OEDP reports, and other activities usually funded under section 301(b) of the Act.

(e) Eligible applicants cited under this subpart, if the Secretary determines that planning assistance is necessary and other funds are not available to develop a plan required by Title IX of the Act.

§ 307.53 Submission of applications.

An initial request for assistance shall be submitted to the Assistant Secretary. If the Assistant Secretary approves the initial request, the applicant may submit an application.

§ 307.54 Application requirements.

An application shall indicate the scope of the proposed planning activity, and

provide evidence that the grantee will meet the following requirements:

(a) Where the grantee is a State:

(1) That the grant shall be administered by the Governor or by an agency he designates as responsible for the comprehensive economic development planning process.

(2) That an ongoing economic development process exists or will be established. This process shall incorporate the goals and objectives of sub-State planning programs and procedures to assure that State and sub-State development activities are not contradictory. This process shall allow for the expression of private views. While this planning process shall be concerned with all aspects of State economic development, emphasis shall be placed on the development of a meaningful, coordinated policy toward geographic areas with persistent unemployment and low incomes.

(3) That the results of the planning process shall be incorporated in the executive decisionmaking process in some formalized manner. The emphasis of the assistance, however, is on the planning process rather than the production of a plan.

(b) Where the grantee is a sub-State planning district or economic development district:

(1) That technical assistance provided by districts to local governments under section 302(b) of the Act shall increase their capabilities to participate in ongoing district planning programs.

(2) That A-95 review procedures funded under title III shall be consistent with the purpose of the Act.

(3) That districts funded under section 302(a) of the Act shall participate with the State in developing procedures for incorporating the goals of their on going economic development programs into the State's comprehensive planning process and for reflecting State goals and objectives as they impact on the district plans.

(c) Where the grantee is a city or county:

(1) That the grant shall be administered by the Chief executive officer of a unit of government which has authority to undertake broad planning activities and develop a continuous planning process.

(2) That planning shall involve both public officials and private citizens. If no procedure exists for this involvement, a special planning committee of public and private citizens broadly representative of the community should be established in the Office of the Mayor or county executive.

(3) That the primary emphasis of the planning process shall be on the formulation of a program to reduce unemployment and increase incomes.

(4) That a systematic approach shall be taken to analyze the local economy, define development goals, determine project opportunities, and formulate and implement a development program. OEDP or other guidelines for areas may be used in accomplishing this requirement.

(5) That, if a city or county is located in a larger economic development planning unit, activities funded with a planning grant shall be coordinated with the larger unit.

§ 307.55 Grant limitations.

Planning grants shall be made on terms established by the Assistant Secretary subject to the following limitations:

(a) Grants may not cover the costs of work already performed or of services already provided.

(b) Grants under section 302 may be provided in addition to assistance available under section 301(b) of the Act, but may neither supplant this assistance nor fund activities usually funded under 301(b) including on going administrative support and the preparation of original OEDP documents, updated OEDP documents or OEDP reports.

(c) A planning grant may not exceed 75 percent of the total amount of funds required for the project.

(d) No Federal funds may be included in the 25 percent non-Federal share.

(e) In determining the amount of the non-Federal share, the Assistant Secretary shall give consideration to contributions both in cash and in-kind.

(f) This assistance shall be provided in accordance with the review procedure required under Title IV of the Intergovernmental Cooperation Act of 1968, as amended, and shall be used in conjunction with any other available Federal planning assistance to further the comprehensive nature of this planning program, and to assure the efficient utilization of all available planning resources in the achievement of the objectives of this grant.

(g) Grantees will conform to EDA financial requirements including those requirements promulgated in Federal Management Circular (FMC) 74-7 (OMB Circular A-102).

§ 307.56 Annual reports.

Grant recipients shall submit to the Assistant Secretary an annual report 60 days before the anniversary of their grants. The report shall include:

(a) States.

(1) How requirements in section 307.54 have been met.

(2) Review and evaluation of the planning process supported and program activities undertaken in relation to the specific goals and objectives described in the grant agreement.

(3) Policy, planning and development documents that have resulted from the assisted planning activities.

(b) Sub-State Planning Districts and Economic Development Districts.

(1) Cooperative procedures established to include district information in the State planning process, if funded for this purpose.

(2) Planning information exchanged with the State and other districts, and an evaluation of how this has affected

the district's ability to achieve its development goals, if funded for this purpose.

(3) Review and evaluation of the planning process supported and program activities undertaken in relation to the specific goals and objectives described in the grant agreement.

(4) For grants under 302(b) of the Act, describe the nature of the technical assistance provided to local governments and document the results.

(5) Description of the A-95 review process funded under 302(b) of the Act, and improvements made in relating it to the State planning process.

(c) Cities and Counties. Review and evaluation of the planning process supported and program activities undertaken in relation to the specific goals and objectives described in the grant agreement.

§ 307.57 Coordination.

The Secretary through the Assistant Secretary for Economic Development shall coordinate his activities in making grants under this subpart with the Title V Regional Commissions and the Appalachian Regional Commission acting through the Federal and State Cochairman. Where a project is to be located wholly or partially within the boundaries of a Title V or the Appalachian region, or is of national or regional significance, the Federal and State Cochairman shall be furnished notice of project activity during the early phases of development and be kept advised of significant developments through the application review and final grant process.

§ 307.58 Requirements.

Part 309 of EDA's Rules and Regulations, as amended, apply to planning grants under this subpart.

29. A new Part 308 is added to read as follows:

PART 308—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE GRANTS

Subpart A—Requirements for Adjustment Grants Under Title IX

- Sec.
308.1 Purpose.
308.2 Definitions.
308.3 Applications.
308.4 Award of Adjustment Grants.
308.5 Use of Adjustment Grants.
308.6 Planning Requirements.

Subpart B—Specific Uses of Grants to Carry Out Economic Adjustment

- 308.21 Purpose.
308.22 Definitions.
308.23 Public Facilities.
308.24 Business Development.
308.25 Planning, Research and Technical Assistance.
308.26 Unemployment Compensation.
308.27 Other Uses.
308.28 General Requirements.

Subpart C—Reports

- 308.50 Purpose.
308.51 Reports by Eligible Recipients.

AUTHORITY: Sec. 701, Pub. L. 89-136 (August 26, 1965); (42 U.S.C. 3211), 9 Stat. 570 and Department of Commerce Organization Order 10-4, April 1, 1970 (35 FR 5970).

Subpart A—Requirements for Adjustment Grants Under Title IX

§ 308.1 Purpose.

The purpose of this part is to set forth the requirements and procedures under which eligible recipients may receive grants under title IX of the Act.

§ 308.2 Definitions.

"Eligible recipient" as used in this part means a redevelopment area or economic development district established under title IV of this Act, an Indian tribe, the Governor of a State or a State agency designated by him, a city or other political subdivision of a State, or a consortium of such political subdivisions.

§ 308.3 Applicants.

Eligible recipients as defined in section 308.2 may apply for grants.

§ 308.4 Award of adjustment grants.

(a) The Assistant Secretary may make grants directly to an eligible recipient in an area which the Secretary determines has experienced, or may reasonably be foreseen to be about to experience, a special economic development need. This need may arise from actual or threatened severe unemployment caused by economic dislocation, including unemployment caused by actions of the Federal Government or by compliance with Federal regulations, and economic adjustment problems resulting from severe changes in economic conditions. Grants will not be made which would have the purpose and effect of replacing the efforts of the economic adjustment program of the Department of Defense.

(b) The Assistant Secretary may approve a plan or planning application if he finds that it meets the requirements of section 308.6, and is satisfied that the projects included in the plan will be properly and efficiently administered, operated, or maintained. The approval by the Assistant Secretary of a plan or the making of an adjustment grant depends on a number of factors which may include the following:

(1) The level of appropriations for title IX.

(2) The severity of the economic adjustment problem. Preference will be given to situations where at least 500 jobs, or a significant percent of jobs in the planning area have been threatened or affected.

(3) The responsiveness of the plan to severe unemployment and adjustment problems.

(4) The degree to which the plan is anticipatory and innovative to meet either an abrupt or erosive change in economic conditions.

(5) The capability of the eligible recipient to solve these problems.

(6) The relation between the title IX funds needed to implement the plan and the degree to which the plan would carry out the purpose of title IX.

(7) The level of unemployment of the area.

(8) The element of joint involvement of State and sub-state entities in the projects.

(c) Approval of a plan or planning application is a prerequisite for a grant, but approval of a plan does not obligate the Assistant Secretary to make a grant, nor does approval of a plan require funding at the full level requested.

§ 308.5 Use of adjustment grants.

Grants shall be used to develop or carry out economic adjustment plans. Disbursement of grants by eligible recipients shall be in accordance with plans or planning applications submitted under § 308.6, and the following requirements;

(a) Adjustment grants received by eligible recipients to develop plans shall be used to develop plans that meet the requirements of section 308(a). The purpose of these grants is to assist eligible recipients to qualify for title IX grants to carry out their plans. The awarding of a grant to develop a plan, however, does not obligate the Assistant Secretary to make a subsequent grant to carry out the plan.

(b) An Adjustment grant received by an eligible recipient to carry out a plan may be used for one or more of the following purposes:

- (1) Public facilities;
- (2) Business Development;
- (3) Planning;
- (4) Research;
- (5) Technical assistance;
- (6) Public services;
- (7) Rent supplements;
- (8) Mortgage payment assistance;
- (9) Relocation of individuals;
- (10) Training;
- (11) Unemployment compensation if the eligible recipient is a State; and
- (12) Other appropriate assistance.

(c) Adjustment grants to carry out a plan may be disbursed by eligible recipients through direct expenditures or through redistribution by them to public and private entities in grants, loans, guarantees, or other appropriate assistance. No grant, however, may be made by eligible recipients to a private profit-making entity.

§ 308.6 Planning requirement.

(a) Plans submitted by eligible recipients to the Assistant Secretary as a prerequisite for qualifying for a grant to carry out economic adjustment under title IX shall be consistent with planning goals and objectives which may have been developed under section 302 of the Act and shall contain the following:

(1) An identification of each economic development and adjustment need of the area for which assistance is sought. This should be an explanation of anticipated or existing economic problems and their impact on the eligible recipient.

(2) A description of each activity planned to meet each need. This explanation should include all activities that the eligible recipient has taken or plans to take regardless of whether funding is sought for them under title IX, and should indicate how each activity will contribute to the solution of economic problems.

(3) An explanation of the method of carrying out each planned activity. This should be an explanation for each activity of the amount of funds spent or

needed, how each activity was or will be financed and brought into operation, and how each activity is or will be operated. The costs for each activity proposed to be funded under title IX should be broken down into construction or start up costs, and operating costs. A plan should clearly indicate how a grant under title IX, if made by the Assistant Secretary, would be used.

(4) A statement regarding the goals of each planned activity. For example, a public health project might provide employment for 100 people, treat 3,000 people a year, and induce new industry to move into an area.

(5) Assurances, if an eligible recipient intends to redistribute funds provided in a title IX grant through loans, that the proceeds from the repayment of the loans will be used for economic adjustment in a manner consistent with title IX. Assurances shall include a contractual agreement between EDA and the eligible recipient describing how repayment proceeds will be used.

(6) Evidence that the plan was developed in cooperation with regional commissions, States, political subdivisions, Indian tribes, and economic development organizations (including redevelopment areas and economic development districts) that, based on reasonable expectations, may be affected by implementation of the plan.

(7) An identification and analysis of the potential environmental impacts of the planned activities, including identifiable projects.

(b) Planning applications submitted by eligible recipients to the Assistant Secretary as a prerequisite for a grant to develop a plan required under subsection (a) shall contain the following:

(1) An identification of each economic development and adjustment need of the area for which assistance is sought. This should be a detailed explanation of anticipated or existing economic problems and their impact on the eligible recipient. The amount of detail, however, does not have to be as great as in paragraph (a) (1), and may be altered in the subsequent plan.

(2) A description of each activity planned to meet each need. This may be a very tentative identification of activities that the eligible recipient has taken or may take to solve economic problems. This description may be brief, and may be altered in the subsequent plan.

(c) In submitting plans or planning applications, the review procedures of Office of Management and Budget Circular A-95, as amended, shall be followed. Eligible recipients shall also provide copies of their plans or planning applications to the State, and if applicable, the Regional Commission in which the eligible recipient is located. States and Regional Commissions may comment on plans and planning applications, and the Assistant Secretary shall give due consideration to their comments prior to awarding an adjustment grant.

Subpart B—Specific Uses of Grants To Carry Out Economic Adjustment

§ 308.21 Purpose.

The purpose of this Subpart is to elaborate upon the specific uses of grants to carry out economic adjustment § 308.5(b) listed how title IX grants may be used, and their Subpart states requirements regarding each specific use.

§ 308.22 Definitions.

As used in this Subpart, individual specific uses of grants have the following meanings.

(a) "Public facilities" means public works, and development facility projects of a nature that EDA assists under title I and section 201 of the Act.

(b) "Business development" means industrial and commercial projects of a nature that EDA assists under section 202 of the Act.

(c) "Planning, Research and Technical Assistance" means technical assistance and related activities of a nature that EDA undertakes under title III of the Act.

(d) "Unemployment compensation" means unemployment compensation provided by the Secretary of Labor.

(e) "Public services" means a program established to provide temporary employment in public service where such is a material part of the plan for economic adjustment assistance to the area.

§ 308.23 Public facilities.

(a) An adjustment grant may be used for a public facility if the public facility has a reasonable relation to the purpose of title IX. Grants may be used for the acquisition or development of land and improvements for public works or development facility usage; the acquisition, construction, rehabilitation, alteration, expansion, or improvement of these facilities, including related machinery and equipment; and the operation of these facilities.

(b) An eligible recipient may redistribute an adjustment grant by grant or loan to a private or public nonprofit organization or association, but not to a private profitmaking entity.

(c) Title IX grants may be used for part or all of the cost of the activities described in this section.

§ 308.24 Business development.

(a) An adjustment grant may be used for business development if the business development has a reasonable relation to the purpose of title IX. Grants may be used for the purchase, development and operation of land and facilities (including machinery and equipment) for industrial or commercial usage, including the construction of new buildings, the rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of existing buildings by (A) purchasing evidences of indebtedness, (B) making loans and working capital loans (which may include participation in loans), (C) guaranteeing loans and working capital loans made to pri-

vate borrowers by private lending institutions for any of the purposes of this subsection upon application by the lending institution, and (D) guaranteeing rental payments of leases for buildings and equipment.

(b) Title IX grants may be used for funding part or all of the cost of the activities described in this section.

§ 308.25 Planning, research and technical assistance.

(a) An adjustment grant may be used for planning, research and technical assistance if these activities have a reasonable relation to the purpose of title IX. Grants may be used for project planning; feasibility studies; management and operational assistance; administrative expenses; studies evaluating the needs of, and developing potentialities for, economic growth; and other related activities. This assistance is in addition to assistance available under title III of the Act.

(b) Title IX grants may be for part or all of the costs of the activities described in this section.

§ 308.26 Unemployment compensation.

(a) If the Assistant Secretary determines that payment of unemployment compensation will materially contribute to the economic adjustment of an area and such assistance is not otherwise available he may include as part of an adjustment grant an amount to be transferred to the Secretary of Labor for purposes of unemployment compensation in accordance with section 903(d) of the Act.

(b) Adjustment grant funds for unemployment compensation may be made available only to States. The eligible recipient, therefore, shall be a State, or obtain a prior agreement with the State to administer these funds.

§ 308.27 Other uses.

(a) Adjustment grants may be made available by the Assistant Secretary for public services, rent supplements, mortgage payment assistance, relocation of individuals, training, and for other appropriate purposes if reasonably related to the purposes of title IX, and if useful to carry out a plan.

(b) Grants may be used to assist in the relocation of unemployed workers and their families living with them when it is reasonably clear that alternative employment for them will not occur in their location during the process of long range economic adjustment and when such assistance is not available under the Comprehensive Employment and Training Act of 1973.

§ 308.28 General requirements.

(a) An eligible recipient shall agree that it will as a condition precedent to utilizing Title IX grant funds through direct expenditures, or through redistribution by grants, loans, loan guarantees or other appropriate assistance, determine with respect to the project or activity proposed to be assisted, and certify to the Assistant Secretary with supporting evidence that:

(1) Such project or activity complies with the requirements and conditions set forth in §§ 309.1, 309.3, 309.4, 309.5, 309.6, 309.9, 309.14, 309.15 and Part 310 of these regulations, and section 702 of the Act, and that

(2) The recipients of the grant or loan or the beneficiaries of any guarantee (or "other parties" as defined in 15 CFR Subtitle A, Part 8) have executed assurances of compliance with Title VI of the Civil Rights Act of 1964, as amended; with Civil Rights Regulations of the Department of Commerce (15 CFR, Subtitle A, Part 8, as amended); and with Section 112 of Public Law 92-65 relating to discrimination on the basis of sex.

(b) In addition to the certification required by paragraphs (1) and (2) immediately above, an eligible recipient shall provide sufficient environmental data as required by the Assistant Secretary to assist him in determining that the requirements of the National Environmental Policy Act and the National Historic Preservation Act have been met with respect to the project or activity proposed to be assisted. Compliance with these requirements shall be a condition precedent to utilizing title IX grant funds. When the Agency's environmental review process reveals conditions or safeguards which should be implemented when the adjustment grant is to be undertaken in order to protect or enhance environmental quality, or minimize adverse environmental impacts, such conditions or safeguards shall be set forth in the Agency's environmental review record, shall be specified as requirements of the adjustment grant and in any applicable third party contract respecting the grant, and shall be implemented or caused to be implemented by the grantee.

(c) The retention and custodial requirements for records specified in Federal Management Circular 74-7 (Office of Management and Budget Circular A-102), as amended, shall be followed.

(d) After making an adjustment grant, the grantee must provide assurance satisfactory to the Secretary regarding each specific project to be funded under title IX that such project is consistent with title IX and the general purposes of the Act.

Subpart C—Reports

§ 308.50 Purpose.

The purpose of this subpart is to describe required reports.

§ 308.51 Reports by eligible recipients.

An eligible recipient which receives title IX assistance directly from the Assistant Secretary shall make a complete report each year that the assistance continues and for one year thereafter to the Assistant Secretary. The report shall include:

(a) Whether planned activities are completed and operational, and, if not completed, when it is anticipated they will be completed;

(b) The costs incurred for each activity partially completed, and completed;

(c) The operational costs of activities if operational;

(d) The degree to which activities have achieved their planned goals as described in the original plan;

(e) A general evaluation of the effectiveness of the title IX assistance provided to the recipient; and

(f) The compliance status and effectiveness of any conditions or safeguards specified as requirements of the adjustment grant.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

30. Section 309.7 is amended by amending paragraph (a) to read as follows:

§ 309.7 Employment of expeditors or administrative employees; compensation of persons engaged by or on behalf of applicants.

(a) No application or plan for financial assistance shall be approved by EDA under sections 101, 201, 202, 301, 403, or 903 of the Act unless the applicant:

31. Section 309.10 is amended by amending the first sentence to read as follows:

§ 309.10 Assurance of job opportunities for the unemployed.

(a) Applicants for business development loans under section 202 of the Act and direct and substantial beneficiaries of title IX grants and EDA assisted public works project * * *

32. A new Part 312 is added to read as follows:

PART 312—SUPPLEMENTAL AND BASIC ASSISTANCE UNDER SECTION 304 OF THE ACT

Sec.

312.1 Purpose.

312.2 Apportionment among States.

312.3 State Matching Share.

312.4 Selection and qualification of projects for supplementary assistance.

312.5 Selection and qualification of projects for basic grant or loan assistance.

312.6 Construction Management and Disbursement.

312.7 Conditions for disbursement of funds.

AUTHORITY: Sec. 701, Pub. L. 89-136 (August 26, 1965); (42 U.S.C. 3211), 79 Stat. 570 and Department of Commerce Organization Order 10-4, April 1, 1970 (35 FR 5970).

§ 312.1 Purpose.

The purpose of this subpart is to set forth the requirements and procedures governing the extension of assistance under Section 304 of the Act.

§ 312.2 Apportionment among States.

The Assistant Secretary shall determine as of the end of each fiscal year the total of all grants obligated for each State under Title I of the Act since August 26, 1965, and the total of all such grants obligated for all the States since August 26, 1965. Funds appropriated and

made available for carrying out the purpose of Section 304 of the Act shall be obligated to the several States in the ratio that grants obligated in each State under Title I from August 26, 1965, to the end of the preceding fiscal year bear to the total of all such grants made to all States during the same period. The obligation of Section 304 funds to the States shall be effected by an agreement or acceptance setting forth or identifying the terms and conditions for the use and availability of such funds, which shall include the provisions of Section 304 of the Act and rules and regulations issued by the Assistant Secretary pursuant thereto.

§ 312.3 State matching share.

Funds obligated to a State shall be available for supplementing or making grants and loans authorized under Titles I, II and IV of the Act for projects within such States provided that the State makes a contribution which is equal to at least 25% of the funds being made available to a particular project from funds appropriated under Section 304 of the Act. Participations in or contributions to a project by local subdivisions of a State or private individuals or organizations shall not be deemed contributions by the State as required by this section.

§ 312.4 Selection and qualification of projects for supplementary assistance.

The selection of projects to be assisted by the use of funds in supplementing grants or loans made by EDA under Titles I, II or IV of the Act shall be made by the States and communicated to the Assistant Secretary on forms prescribed by the Assistant Secretary. Eligibility and compliance of a project for assistance shall be determined by the Assistant Secretary incident to the evaluation of the application for the underlying basic grant or loan assistance for such project.

§ 312.5 Selection and qualification of projects for basic grant or loan assistance.

(a) In those cases where the States propose to use funds for basic grant or loan assistance for projects meeting requirements for assistance under Titles I, II, or IV of the Act, and for which funds have been determined to be unavailable by the Assistant Secretary under Titles I, II, or IV, the States shall communicate the proposed use of the funds to the Assistant Secretary on forms prescribed by the Assistant Secretary. A proposal shall contain or be accompanied by documentation or certification evidencing compliance with the requirements, conditions, and limitations as would be applicable to such project if it were being considered for funding under Titles I, II, or IV of the Act. Eligibility and compliance of a project for assistance shall be determined by the Assistant Secretary in the same manner as applicable to projects receiving only supplementary assistance under section 304 of the Act.

(b) A proposal by a State for the use of funds for a basic grant or loan shall

be accompanied by evidence that the principal governing authorities for the area in which a project is to be located have approved the project.

(c) Requests for the disbursement of funds for basic loans by a State shall be accompanied by assurances that the proceeds from the repayment of the loans will be used for economic development in a manner consistent with the Act. Assurances shall include a contractual agreement between EDA and the State describing how repayment proceeds will be used.

(d) Funds may not be used by a State as a grant to a private profitmaking entity.

§ 312.6 Construction management and disbursement.

Projects assisted through the use of funds in supplementing EDA grants or loans under title I, II, or IV of the Act or in providing basic grants or loans shall be subject to the same procedures and requirements relating to post-approval compliances, construction management, and disbursement as applicable to projects funded under title I, II, and IV of the Act.

§ 312.7 Conditions for disbursement of funds.

(a) It shall be a condition for the disbursement of funds that a State shall conform to the requirements of the Act and provide acceptable evidence of compliance with requirements conditions and limitations applicable to projects assisted under titles I, II, and IV of the Act. States shall be promptly notified of proposals which do not meet requirements.

(b) Subsequent to July 1, 1975, it shall be a condition for the disbursement of funds for any project that the State must make a showing:

(1) That such funds will be used in a manner consistent with the State planning process assisted under Subpart D of Part 307 if such a planning process has been established; or

(2) That such State is not receiving planning assistance under Subpart D of Part 307 but has an economic development planning process meeting the standards required for assistance under Subpart D of Part 307 and that the proposed use of funds is consistent with such planning process; or

(3) that the project is clearly of such nature that the Assistant Secretary may conclude that its implementation would not impair the benefits intended to be derived from an orderly economic development planning process.

(Sec. 701, Public Law 89-136 (August 26, 1965); 42 U.S.C. 3211; 79 Stat. 570 and Department of Commerce Organization Order 10-4, April 1, 1970 (35 FR 5970))

Effective date: These regulations will become effective on December 27, 1974.

Dated: December 19, 1974.

WILLIAM W. BLUNT, Jr.,
Assistant Secretary
for Economic Development.

[FR Doc. 74-30093 Filed 12-27-74; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7337]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Increase in Alternative Capital Gains Tax

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for March 16, 1971 (33 FR 4986), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to amendments made to the Internal Revenue Code of 1954 by section 511 of the Tax Reform Act of 1969 (83 Stat. 635), which are effective for taxable years beginning after December 31, 1969. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below.

Under the new rules, the alternative tax on the excess of the net long-term capital gain over the net short-term capital loss is gradually increased from 25 percent to a maximum of 35 percent (30 percent in the case of a corporation), except with respect to subsection (d) gain. The subsection (d) gain remains subject to an alternative tax of 25 percent. Subsection (d) gain, as defined in section 1201(d) of the Code, means the sum of the long-term capital gains for the taxable year arising (1) in the case of amounts received before January 1, 1975, from sales or dispositions (other than gain from a transaction described in section 631 or 1235 of the Code) pursuant to binding contracts entered into on or before October 9, 1969; (2) in respect of distributions from a corporation made prior to October 10, 1970, which are pursuant to a plan of complete liquidation adopted on or before October 9, 1969; and (3) in the case of a taxpayer other than a corporation, from any other source, but the amount taken into account from such other sources is limited to an amount equal to the excess (if any) of \$50,000 (\$25,000 in the case of a married individual filing a separate return) over the sum of the gains described in (1) and (2) above.

The changes included herein change the proposed amendments published with the notice by revising the format of § 1.852-4(c) to take into account the changes made thereto by T.D. 7187, which appeared in the Federal Register for July 6, 1972 (37 FR 13254); by revising § 1.1201-1(f) (2) (iii) to make a technical change in the interest of clarity; by deleting § 1.1201-1(g), which referred the reader only to a definition given elsewhere; by replacing references in § 1.1201-1 to deleted paragraph (g) with references to section 1222(11); by deleting the revision of section 1222(9) in § 1.1222, which was effected by T.D. 7301,

which appeared in the Federal Register for January 4, 1974 (39 FR 962); and by revising § 1.1378-3(b), in the interest of clarity.

In view of the foregoing, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. The amendment to paragraph (c) of § 1.852-4, as contained in paragraph 5 of the notice of proposed rulemaking, is changed to read that, in lieu of the proposed revision of paragraph (c), a new paragraph (c) (3) is added to read as set forth below.

PARAGRAPH 2. Section 1.1201-1, as set forth in paragraph 11 of the notice of proposed rulemaking, is changed by revising paragraphs (a) (1) (i), (b) (1), (f) (1), and (f) (2) (iii), by deleting paragraph (g), and by redesignating paragraph (h) as paragraph (g), as set forth below.

PARAGRAPH 3. The amendment to § 1.1222, as set forth in paragraph 12 of the notice of proposed rulemaking, is changed to read as set forth below.

PARAGRAPH 4. Section 1.1378-3, as set forth in paragraph 16 of the notice of proposed rulemaking, is changed by revising paragraph (b) (2) to read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917 (26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of
Internal Revenue.

Approved: December 20, 1974.

ERNEST S. CHRISTIAN, Jr.,
Acting Assistant Secretary of the
Treasury.

PARAGRAPH 1. Section 1.802 is amended by revising section 802(a) (2) and the historical note to read as follows:

§ 1.802 Statutory provisions; life insurance companies; tax imposed; life insurance company taxable income defined.

Sec. 802. Tax imposed—(a) Tax imposed.

(2) Alternative tax in case of capital gains. If for any taxable year beginning after December 31, 1961, the net long-term capital gain of any life insurance company exceeds the net short-term capital loss, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such tax is less than the tax imposed by such paragraph) which shall consist of the sum of—

(A) A partial tax, computed as provided by paragraph (1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of such excess, and

(B) An amount determined as provided in section 1201(a) on such excess.

[Sec. 802 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 38); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115); sec. 3(b) (1), Act of Oct. 23, 1962 (Public Law 87-858, 76 Stat. 1136); sec. 235(c) (1), Rev. Act 1964 (78 Stat. 126); sec. 511(c) (1), Tax Reform Act 1969 (83 Stat. 637)]

PAR. 2. Section 1.802-3 is amended by revising paragraph (f) (2) to read as follows:

§ 1.802-3 Tax imposed on life insurance companies.

(f) *Tax imposed in case of certain capital gains.* * * *

(2) *Alternative tax in case of capital gains for taxable years beginning after December 31, 1961.* For taxable years beginning after December 31, 1961, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes an alternative tax in lieu of the tax imposed by section 802(a)(1), if and only if such alternative tax is less than the tax imposed by section 802(a)(1). The alternative tax is the sum of—

(i) A partial tax, computed as provided by section 802(a)(1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of the excess of its net long-term capital gain over its net short-term capital loss, and

(ii) (a) In the case of a taxable year beginning before January 1, 1970, are amount equal to 25 percent of such excess, or

(b) In the case of a taxable year beginning after December 31, 1969, an amount determined as provided in section 1201(a) and paragraph (a)(3) of § 1.1201-1 on such excess.

In the computation of the partial tax, the deductions provided by sections 170 (as modified by section 809(a)(3)), 243, 244, 245 (as modified by sections 804(a)(5) and 809(d)(8)(B)), and the limitation provided by section 809(f), shall not be recomputed as a result of the reduction of taxable investment income, and gain from operations, by the amount of such excess. Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses (such as the rules for determining the amount, characterization and treatment thereof) shall apply with respect to life insurance companies.

PAR. 3. Section 1.852 is amended by revising subparagraphs (A), (C), and (D) (ii) and (iii) of section 852(b)(3) and the historical note to read as follows:

§ 1.852 Statutory provisions; taxation of regulated investment companies and their shareholders.

Sec. 852. *Taxation of regulated investment companies and their shareholders.* * * *

(b) *Method of taxation of companies and shareholders.* * * *

(3) *Capital gains—(A) Imposition of tax.* There is hereby imposed for each taxable year in the case of every regulated investment company a tax, determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of—

(i) The net short-term capital loss, and

(ii) The deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(C) *Definition of capital gain dividend.* For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year described in section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For purposes of subparagraph (A) (ii), the deduction for dividends paid shall, in the case of a taxable year beginning before January 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

(D) *Treatment by shareholders of undistributed capital gains.* * * *

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased, with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2).

[Sec. 852 as amended by sec. 2(a), Act of July 11, 1956 (Public Law 700, 84th Cong., 70 Stat. 530); secs. 39(a), 101 (a) and (b), Technical Amendments Act 1958 (72 Stat. 1638, 1674); sec. 10(b)(2) and (3), Act of Sept. 14, 1960 (Public Law 86-779, 74 Stat. 1009); sec. 229 (a) and (b), Rev. Act 1964 (78 Stat. 99); sec. 511(c)(2), Tax Reform Act 1969 (83 Stat. 637)]

PAR. 4. Section 1.852-2 is amended by revising paragraph (b) (1) and (2) (ii) to read as follows:

§ 1.852-2 Method of taxation of regulated investment companies.

(b) *Taxation of capital gains—(1) In general.* Section 852(b)(3)(C) imposes (i) in the case of a taxable year beginning before January 1, 1970, a tax of 25 percent, or (ii) in the case of a taxable year beginning after December 31, 1969, a tax determined as provided in section 1201(a) and paragraph (a)(3) of § 1.1201-1, on the excess, if any, of the net long-term capital gain of a regulated investment company (subject to tax under part I, subchapter M, chapter 1 of the Code) over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561)

determined with reference to capital gain dividends only. For the definition of capital gain dividend paid by a regulated investment company, see section 852(b)(3)(C) and paragraph (c) of § 1.852-4. In the case of a taxable year ending after December 31, 1969, and beginning before January 1, 1975, such deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A). See § 1.852-10, relating to certain distributions in redemption of interests in unit investment trusts which, for purposes of the deduction for dividends paid with reference to capital gain dividends only, are not considered preferential dividends under section 562(c). See section 855 and § 1.855-1, relating to dividends paid after the close of the taxable year.

(2) *Undistributed capital gains.* * * *

(ii) *Effect on earnings and profits of a regulated investment company.* If a regulated investment company designates an amount as undistributed capital gains for a taxable year, the earnings and profits of such regulated investment company for such taxable year shall be reduced by the total amount of the undistributed capital gains so designated. In such case, its capital account shall be increased—

(a) In the case of a taxable year ending before January 1, 1970, by 75 percent of the total amount designated,

(b) In the case of a taxable year ending after December 31, 1969, and beginning before January 1, 1975, by the total amount designated decreased by the amount of tax imposed by section 852(b)(3)(A) with respect to such amount, or

(c) In the case of a taxable year beginning after December 31, 1974, by 70 percent of the total amount designated. The earnings and profits of a regulated investment company shall not be reduced by the amount of tax which is imposed by section 852(b)(3)(A) on an amount designated as undistributed capital gains and which is paid by the corporation but deemed paid by the shareholder.

PAR. 5. Section 1.852-4 is amended by revising paragraph (b) (1) and (2) and paragraph (c) (3) to read as follows:

§ 1.852-4 Method of taxation of shareholders of regulated investment companies.

(b) *Capital gains—(1) In general.* Under section 852(b)(3)(B), shareholders of a regulated investment company who receive capital gain dividends (as defined in paragraph (c) of this section), in respect of the capital gains of an investment company for a taxable year for which it is taxable under part I, subchapter M, chapter 1 of the Code, as a regulated investment company, shall treat such capital gain dividends as gains from the sale or exchange of capital assets held for more than 6 months and realized in the taxable year of the shareholder in which the dividend was received. In the case of dividends with respect to any taxable year of a regulated

investment company ending after December 31, 1969, and beginning before January 1, 1975, the portion of a shareholder's capital gain dividend to which section 1201(d) (1) or (2) applies is the portion so designated by the regulated investment company pursuant to paragraph (c) (2) of this section.

(2) *Undistributed capital gains.* (i) A person who is a shareholder of a regulated investment company at the close of a taxable year of such company for which it is taxable under part I of subchapter M shall include in his gross income as a gain from the sale or exchange of a capital asset held for more than 6 months any amount of undistributed capital gains. The term "undistributed capital gains" means the amount designated as undistributed capital gains in accordance with paragraph (a) of § 1.852-9, but the amount so designated shall not exceed the shareholder's proportionate part of the amount subject to tax under section 852(b) (3) (A). Such amount shall be included in gross income for the taxable year of the shareholder in which falls the last day of the taxable year of the regulated investment company in respect of which the undistributed capital gains were designated. The amount of such gains designated under paragraph (a) of § 1.852-9 as gain described in section 1201(d) (1) or (2) shall be included in the shareholder's gross income as gain described in section 1201(d) (1) or (2). For certain administrative provisions relating to undistributed capital gains, see § 1.852-9.

(ii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b) (3) (D) (i) and subdivision (i) of this subparagraph shall be deemed to have paid for his taxable year for which such amount is so includible—

(a) In the case of an amount designated with respect to a taxable year of the company ending before January 1, 1970, a tax equal to 25 percent of such amount.

(b) In the case of a taxable year of the company ending after December 31, 1969, and beginning before January 1, 1975, a tax equal to the tax designated under paragraph (a) (1) of § 1.852-9 by the regulated investment company as his proportionate share of the capital gains tax paid with respect to such amount, or

(c) In the case of an amount designated with respect to a taxable year of the company beginning after December 31, 1974, a tax equal to 30 percent of such amount.

Such shareholder is entitled to a credit or refund of the tax so deemed paid in accordance with the rules provided in paragraph (c) (2) of § 1.852-9.

(iii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b) (3) (D) (i) and subdivision (i) of this subparagraph shall increase the adjusted basis of the shares of stock with respect to which such amount is so includible—

(a) In the case of an amount designated with respect to a taxable year of

the company ending before January 1, 1970, by 75 percent of such amount.

(b) In the case of an amount designated with respect to a taxable year of the company ending after December 31, 1969, and beginning before January 1, 1975, by the amount designated under paragraph (a) (1) (iv) of § 1.852-9 by the regulated investment company, or

(c) In the case of an amount designated with respect to a taxable year of the company beginning after December 31, 1974, by 70 percent of such amount.

(c) * * *

(3) *Subsection (d) gain for certain taxable years.* In the case of capital gain dividends with respect to any taxable year of a regulated investment company ending after December 31, 1969, and beginning before January 1, 1975 (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 855), the company must include in its written notice under paragraph (c) (1) of this section a statement showing the shareholder's proportionate share of the capital gain dividend which is gain described in section 1201(d) (1) and his proportionate share of such dividend which is gain described in section 1201(d) (2). In determining the portion of the capital gain dividend which, in the hands of a shareholder, is gain described in section 1201(d) (1) or (2), the regulated investment company shall consider that capital gain dividends for a taxable year are first made from its long-term capital gains for such year which are not described in section 1201(d) (1) or (2), to the extent thereof, and then from its long-term capital gains for such year which are described in section 1201(d) (1) or (2). A shareholder's proportionate share of gains which are described in section 1201(d) (1) is the amount which bears the same ratio to the amount paid to him as a capital gain dividend in respect of such year as (i) the aggregate amount of the company's gains which are described in section 1201(d) (1) and paid to all shareholders bears to (ii) the aggregate amount of the capital gain dividend paid to all shareholders in respect of such year. A shareholder's proportionate share of gains which are described in section 1201(d) (2) shall be determined in a similar manner. Every regulated investment company shall keep a record of the proportion of each capital gain dividend (to which this paragraph applies) which is gain described in section 1201(d) (1) or (2). If, for his taxable year, a shareholder must include in his gross income a capital gain dividend to which this paragraph applies, he shall attach to his income tax return for such taxable year a statement showing, with respect to the total of such dividends for such taxable year received from each regulated investment company, the name and address of the regulated investment company from which such dividends are received, the amount of such dividends, the portion of such dividends

which was designated as gain described in section 1201(d) (1), and the portion of such dividends which was designated as gain described in section 1201(d) (2).

PAR. 6. Section 1.852-9 is amended by revising paragraph (a) (1) and adding subparagraph (3) to paragraph (c), as follows:

§ 1.852-9 Special procedural requirements applicable to designation under section 852(b) (3) (D).

(a) *Regulated investment company—*
(1) *Notice to shareholders.* (i) A designation of undistributed capital gains under section 852(b) (3) (D) and paragraph (b) (2) (i) of § 1.852-2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of record of the company at the close of the company's taxable year. The notice on Form 2439 shall show the name, address, and employer identification number of the regulated investment company; the taxable year of the company for which the designation is made; the name, address, and identifying number of the shareholder; the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains; and the tax paid with respect thereto by the company which is deemed to have been paid by the shareholder.

(ii) In the case of a designation of undistributed capital gains with respect to a taxable year of the regulated investment company ending after December 31, 1969, and beginning before January 1, 1975, Form 2439 shall also show the shareholder's proportionate share of such gains which is gain described in section 1201(d) (1), his proportionate share of such gains which is gain described in section 1201(d) (2), and the amount (determined pursuant to subdivision (iv) of this subparagraph) by which the shareholder's adjusted basis in his shares shall be increased.

(iii) In determining under subdivision (ii) of this subparagraph the portion of the undistributed capital gains which, in the hands of the shareholder, is gain described in section 1201(d) (1) or (2), the company shall consider that capital gain dividends for a taxable year are made first from its long-term capital gains for such year which are not described in section 1201(d) (1) or (2), to the extent thereof, and then from its long-term capital gains for such year which are described in section 1201(d) (1) or (2). A shareholder's proportionate share of undistributed capital gains for a taxable year which is gain described in section 1201(d) (1) is the amount which bears the same ratio to the amount included in his income as designated undistributed capital gains for such year as (a) the aggregate amount of the company's gains for such year which are described in section 1201(d) (1) and designated as undistributed capital gains bears to (b) the aggregate amount of the company's gains for such year

which are designated as undistributed capital gains. A shareholder's proportionate share of gains which are described in section 1201(d)(2) shall be determined in a similar manner. Every regulated investment company shall keep a record of the proportion of undistributed capital gains (to which this subdivision applies) which is gain described in section 1201(d)(1) or (2).

(iv) In the case of a designation of undistributed capital gains for any taxable year ending after December 31, 1969, and beginning before January 1, 1975, Form 2439 shall also show with respect to the undistributed capital gains of each shareholder the amount by which such shareholder's adjusted basis in his shares shall be increased under section 852(b)(3)(D)(iii). The amount by which each shareholder's adjusted basis in his shares shall be increased is the amount includible in his gross income with respect to such shares under section 852(b)(3)(D)(i) less the tax which the shareholder is deemed to have paid with respect to such shares. The tax which each shareholder is deemed to have paid with respect to such shares is the amount which bears the same ratio to the amount of the tax imposed by section 852(b)(3)(A) for such year with respect to the aggregate amount of the designated undistributed capital gains as the amount of such gains includible in the shareholder's gross income bears to the aggregate amount of such gains so designated.

(v) Form 2439 shall be prepared in triplicate, and copies B and C of the form shall be mailed to the shareholder on or before the 45th day (30th day for a taxable year ending before February 26, 1964) following the close of the company's taxable year. Copy A of each Form 2439 must be associated with the duplicate copy of the undistributed capital gains tax return of the company (Form 2438), as provided in subparagraph (2)(ii) of this paragraph.

(c) Shareholders.

(3) *Records.* The shareholder is required to keep copy C of the Form 2439 furnished for the regulated investment company's taxable years ending after December 31, 1969, and beginning before January 1, 1975, as part of his records to show increases in the adjusted basis of his shares in such company.

PAR. 7. Section 1.857 is amended by revising section 857(b)(3)(A) and (C) and the historical note to read as follows:

§ 1.857 Statutory provisions; taxation of real estate investment trusts and their beneficiaries.

SEC. 857. *Taxation of real estate investment trusts and their beneficiaries.*

(b) *Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest.*

(3) *Capital gains.*—(A) *Imposition of tax.* There is hereby imposed for each taxable year in the case of every real estate investment trust a tax, determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of—

- (i) The net short-term capital loss; and
- (ii) The deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(C) *Definition of capital gain dividend.* For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For purposes of subparagraph (A)(ii), in the case of a taxable year beginning before January 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

[Sec. 857 as added by sec. 10(a), Act of Sept. 14, 1960 (Public Law 86-779; 74 Stat. 1006); as amended by sec. 201(d)(11), Rev. Act 1964 (78 Stat. 32); sec. 511(c)(3), Tax Reform Act 1969 (83 Stat. 637)]

PAR. 8. Section 1.857-2 is amended by revising paragraph (b) to read as follows:

§ 1.857-2 Method of taxation of real estate investment trusts.

(b) *Taxation of capital gains.* Section 857(b)(3)(A) imposes (1) in the case of a taxable year beginning before January 1, 1970, a tax of 25 percent, or (2) in the case of a taxable year beginning after December 31, 1969, a tax determined as provided in section 1201(a) and paragraph (a)(3) of § 1.1201-1, on the excess, if any, of the net long-term capital gain of a qualified real estate investment trust over the sum of its net short-term capital loss and its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. In the case of a taxable year ending after December 31, 1969, and beginning before January 1, 1975, the deduction for dividends paid as so determined shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A). For the definition of capital gain dividend paid by a real estate investment trust, see section 857(b)(3)(C) and paragraph (e) of § 1.857-4. See section 858 and § 1.858-1 for rules relating to dividends paid after the close of the taxable year.

PAR. 9. Section 1.857-4 is amended by revising paragraphs (b) and (e) to read as follows:

§ 1.857-4 Method of taxation of shareholders of real estate investment trusts.

(b) *Capital gains.* Under section 857(b)(3)(B), shareholders of a real estate investment trust who receive capital gain dividends (as defined in paragraph (e) of this section), in respect of the capital gains of an investment trust for a taxable year for which it is taxable under part II of subchapter M as a real estate investment trust, shall treat such capital gain dividends as gains from the sale or exchange of capital assets held for more than 6 months and realized in the taxable year of the shareholder in which the dividend was received. In the case of dividends with respect to any taxable year of a real estate investment trust ending after December 31, 1969, and beginning before January 1, 1975, the portion of a shareholder's capital gain dividend which in his hands is gain to which section 1201(d)(1) or (2) applies is the portion so designated by the real estate investment trust pursuant to paragraph (e)(2) of this section.

(e) *Definition of capital gain dividend.* (1) A capital gain dividend, as defined in section 857(b)(3)(C), is any dividend or part thereof which is designated by a real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders not later than 30 days after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 858) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate of the amount so designated. For example, a real estate investment trust making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1961, that \$200,000 of a distribution of \$500,000 made December 15, 1961, constituted a capital gain dividend, amounting to \$2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year and that such excess was \$100,000 instead of \$200,000. In such case, each shareholder would have received a capital gain dividend of \$1 per share instead of \$2 per share.

(2) In the case of capital gain dividends designated with respect to any taxable year of a real estate investment trust ending after December 31, 1969, and beginning before January 1, 1975 (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 858),

the real estate investment trust must include in its written notice designating the capital gain dividend a statement showing the shareholder's proportionate share of such dividend which is gain described in section 1201(d)(1) and his proportionate share of such dividend which is gain described in section 1201(d)(2). In determining the portion of the capital gain dividend which, in the hands of a shareholder, is gain described in section 1201(d)(1) or (2), the real estate investment trust shall consider that capital gain dividends for a taxable year are first made from its long-term capital gains which are not described in section 1201(d)(1) or (2), to the extent thereof, and then from its long-term capital gains for such year which are described in section 1201(d)(1) or (2). A shareholder's proportionate share of gains which are described in section 1201(d)(1) is the amount which bears the same ratio to the amount paid to him as a capital gain dividend in respect of such year as (i) the aggregate amount of the trust's gains which are described in section 1201(d)(1) and paid to all shareholders bears to (ii) the aggregate amount of the capital gain dividend paid to all shareholders in respect of such year. A shareholder's proportionate share of gains which are described in section 1201(d)(2) shall be determined in a similar manner. Every real estate investment trust shall keep a record of the proportion of each capital dividend (to which this subparagraph applies) which is gain described in section 1201(d)(1) or (2).

PAR. 10. Section 1.1201 is amended by revising section 1201 and the historical note to read as follows:

§ 1.1201 Statutory provisions; alternative tax.

Sec. 1201. *Alternative tax.*—(a) *Corporations.* If for any taxable year a corporation has a net section 1201 gain, then, in lieu of the tax imposed by sections 11, 511, 821 (a) or (c), and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of a tax computed on the taxable income reduced by the amount of the net section 1201 gain, at the rates and in the manner as if this subsection had not been enacted, plus—

(1) In the case of a taxable year beginning before January 1, 1975—

(A) A tax of 25 percent of the lesser of—
(i) The amount of the subsection (d) gain, or

(ii) The amount of the net section 1201 gain, and

(B) A tax of 30 percent (28 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971) of the excess (if any) of the net section 1201 gain over the subsection (d) gain; and

(2) In the case of a taxable year beginning after December 31, 1974, a tax of 30 percent of the net section 1201 gain.

(b) *Other taxpayers.* If for any taxable year a taxpayer other than a corporation has a net section 1201 gain, then, in lieu of the tax imposed by sections 1 and 511, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

(1) A tax computed on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain, at the

rates and in the manner as if this subsection had not been enacted.

(2) A tax of 25 percent of the lesser of—
(A) The amount of the subsection (d) gain, or

(B) The amount of the net section 1201 gain, and

(3) If the amount of the net section 1201 gain exceeds the amount of the subsection (d) gain, a tax computed as provided in subsection (c) on such excess.

(c) *Computation of tax on capital gain in excess of subsection (d) gain.*—(1) *In general.* The tax computed for purposes of subsection (b)(3) shall be the amount by which a tax determined under section 1 or 511 on an amount equal to the taxable income (but not less than 50 percent of the net section 1201 gain) for the taxable year exceeds a tax determined under section 1 or 511 on an amount equal to the sum of (A) the amount subject to tax under subsection (b)(1) plus (B) an amount equal to 50 percent of the subsection (d) gain.

(2) *Limitation.* Notwithstanding paragraph (1), the tax computed for purposes of subsection (b)(3) shall not exceed an amount equal to the following percentage of the excess of the net section 1201 gain over the subsection (d) gain:

(A) 29½ percent, in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971, or

(B) 32½ percent, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972.

(d) *Subsection (d) gain defined.* For purposes of this section, the term "subsection (d) gain" means the sum of the long-term capital gains for the taxable year arising—

(1) In the case of amounts received before January 1, 1975, from sales or other dispositions pursuant to binding contracts (other than any gain from a transaction described in section 631 or 1235) entered into on or before October 9, 1969, including sales or other dispositions the income from which is returned on the basis and in the manner prescribed in section 453(a)(1),

(2) In respect of distributions from a corporation made prior to October 10, 1970, which are pursuant to a plan of complete liquidation adopted on or before October 9, 1969, and

(3) In the case of a taxpayer other than a corporation, from any other source, but the amount taken into account from such other sources for the purposes of this paragraph shall be limited to an amount equal to the excess (if any) of \$50,000 (\$25,000 in the case of a married individual filing a separate return) over the sum of the gains to which paragraphs (1) and (2) apply.

(e) *Cross references.* For computation of the alternative tax—

(1) In the case of life insurance companies, see section 802(a)(2);

(2) In the case of regulated investment companies and their shareholders, see section 852(b)(3) (A) and (D); and

(3) In the case of real estate investment trusts, see section 857(b)(3) (A).

[Sec. 1201 as amended by sec. 5(7), Life Insurance Company Tax Act 1955 (70 Stat. 49); sec. 3(f)(2), Life Insurance Company Income Tax Act 1959 (73 Stat. 140); sec. 8(g)(3), Rev. Act 1962 (76 Stat. 999); sec. 511(b), Tax Reform Act 1969 (83 Stat. 835)]

PAR. 11. Section 1.1201-1 is revised to read as follows:

§ 1.1201-1 Alternative tax.

(a) *Corporations.*—(1) *In general.* (i) If for any taxable year a corporation has net section 1201 gain (as defined in section 1222(11)) section 1201(a) imposes

an alternative tax in lieu of the tax imposed by sections 11 and 511, but only if such alternative tax is less than the tax imposed by sections 11 and 511. The alternative tax is not in lieu of the personal holding company tax imposed by section 541 or of any other tax not specifically set forth in section 1201(a).

(ii) In the case of an insurance company, the alternative tax imposed by section 1201(a) is also in lieu of the tax imposed by sections 821 (a) or (c) and 831(a), except that for taxable years beginning before January 1, 1963, the reference to section 821 (a) or (c) is to be read as reference to section 821 (a) (1) or (b). For taxable years beginning after December 31, 1954, and before January 1, 1958, the alternative tax imposed by section 1201(a) shall also be in lieu of the tax imposed by section 802(a), as amended by the Life Insurance Company Tax Act for 1955 (70 Stat. 38), if such alternative tax is less than the tax imposed by such section. See section 802(e), as added by the Life Insurance Company Tax Act for 1955 (70 Stat. 39). However, for taxable years beginning after December 31, 1958, and before January 1, 1962, section 802(a)(2), as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 115), imposes a separate tax equal to 25 percent of the amount by which the net long-term capital gain of any life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3) exceeds its net short-term capital loss. See paragraph (f) of § 1.802-3. For alternative tax for life insurance companies in the case of taxable years beginning after December 31, 1961, see section 802(a)(2) and the regulations thereunder.

(iii) See section 56 and the regulations thereunder for provisions relating to the minimum tax for tax preferences.

(2) *Alternative tax.* The alternative tax is the sum of—

(i) A partial tax computed at the rates provided in sections 11, 511, 821 (a) or (c), and 831(a), on the taxable income of the taxpayer reduced by the amount of the net section 1201 gain, and

(ii) An amount equal to the tax determined under subparagraph (3) of this paragraph.

For taxable years beginning after December 31, 1954, and before January 1, 1958, the partial tax under subdivision (i) of this subparagraph shall also be computed at the rates provided in section 802(a). For taxable years beginning before January 1, 1963, the reference in such subdivision to section 821 (a) or (c) is to be read as a reference to section 821 (a) or (b).

(3) *Tax on capital gains.* For purposes of subparagraph (2)(ii) of this paragraph, the tax shall be—

(i) In the case of a taxable year beginning after December 31, 1974, a tax of 30 percent of the net section 1201 gain,

(ii) In the case of a taxable year beginning after December 31, 1969, and before January 1, 1975—

(a) A tax of 25 percent of the lesser of the amount of the subsection (d) gain (as defined in section 1201(d) and paragraph (f) of this section) or the amount of the net section 1201 gain, plus

(b) A tax of 30 percent (28 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971) of the excess, if any, of the net section 1201 gain over the subsection (d) gain.

(iii) In the case of a taxable year beginning before January 1, 1970, and after March 31, 1954, a tax of 25 percent of the net section 1201 gain, or

(iv) In the case of a taxable year beginning before April 1, 1954, a tax of 26 percent of the net section 1201 gain.

(4) *Determination of special deductions.* In the computation of the partial tax described in subparagraph (2) (i) of this paragraph the special deductions provided for in sections 243, 244, 245, 247, 922, and 941 shall not be recomputed as the result of the reduction of taxable income by the net section 1201 gain.

(b) *Other taxpayers.*—(1) *In general.* If for any taxable year a taxpayer (other than a corporation) has net section 1201 gain (as defined in section 1222(ii)) section 1201(b) imposes an alternative tax in lieu of the tax imposed by sections 1 and 511, but only if such alternative tax is less than the tax imposed by sections 1 and 511. The alternative tax is not in lieu of any other tax not specifically set forth in section 1201(b). See section 56 and the regulations thereunder for provisions relating to the minimum tax for tax preferences.

(2) *Alternative tax.* The alternative tax is the sum of—

(i) A partial tax computed at the rates provided by sections 1 and 511 on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain, and

(ii) In the case of a taxable year beginning after December 31, 1969—

(a) A tax of 25 percent of the lesser of the amount of the subsection (d) gain (as defined in section 1201(d) and paragraph (f) of this section) or the amount of the net section 1201 gain, plus

(b) A tax computed as provided in section 1201(c) and paragraph (e) of this section on the excess, if any, of the net section 1201 gain over the subsection (d) gain, or

(iii) In the case of a taxable year beginning before January 1, 1970, a tax of 25 percent of the net section 1201 gain.

(3) *Cross references.* See § 1.1-2(a) for rule relating to the computation of the limitation on tax in cases where the alternative tax is imposed. See § 1.34-2 (a) for rule relating to the computation of the dividend received credit under section 34 (for dividends received on or before December 31, 1964), and § 1.35-1 (a) for rule relating to the computation of credit for partially tax-exempt interest under section 35 in cases where the alternative tax is imposed.

(c) *Tax-exempt trusts and organizations.* In applying section 1201 in the case of tax-exempt trusts or organiza-

tions subject to the tax imposed by section 511, the only amount which is taken into account as capital gain or loss is that which is taken into account in computing unrelated business taxable income under section 512. Under section 512, the only amount taken into account as capital gain or loss is that resulting from the application of section 631(a), relating to the election to treat the cutting of timber as a sale or exchange.

(d) *Joint returns.* In the case of a joint return, the excess of any net long-term capital gain over any net short-term capital loss is to be determined by combining the long-term capital gains and losses and the short-term capital gains and losses of the spouses.

(e) *Computation of tax on capital gain in excess of subsection (d) gain.*—(1) *In general.* The tax computed for purposes of section 1201(b) (3) and paragraph (b) (2) (ii) (b) of this section shall be the amount by which a tax determined under section 1 or 511 on an amount equal to the taxable income (but not less than 50 percent of the net section 1201 gain) for the taxable year exceeds a tax determined under section 1 or 511 on an amount equal to the sum of (i) the amount subject to tax under section 1201 (b) (1) and paragraph (b) (2) (i) of this section for such year plus (ii) an amount equal to 50 percent of the subsection (d) gain for such year.

(2) *Limitation.* Notwithstanding subparagraph (1) of this paragraph, the tax computed for purposes of section 1201(b) (3) and paragraph (b) (2) (ii) (b) of this section shall not exceed an amount equal to the following percentage of the excess of the net section 1201 gain over the subsection (d) gain for the taxable year:

(i) 29½ percent, in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971, or

(ii) 32½ percent, in the case of taxable year beginning after December 31, 1970, and before January 1, 1972.

(f) *Definition of subsection (d) gain.*—(1) *In general.* For purposes of section 1201 and this section, the term "subsection (d) gain" means the sum of the long-term capital gains for the taxable year arising—

(i) In the case of amounts received or accrued, as the case may be, before January 1, 1975 (other than any gain from a transaction described in section 631 or 1235), from—

(a) Sales or other dispositions on or before October 9, 1969, including sales or other dispositions the income from which is returned as provided in section 453(a) (1) or (b) (1), or

(b) Sales or other dispositions after October 9, 1969, pursuant to binding contracts entered into on or before that date, including sales or other dispositions the income from which is returned as provided in section 453(a) (1) or (b) (1).

(ii) From liquidating distributions made by a corporation which are made (a) before October 10, 1970, and (b) pursuant to a plan of complete liquidation adopted on or before October 9, 1969, or

(iii) In the case of a taxpayer (other than a corporation), from any other source not described in subdivision (i) or (ii) of this subparagraph, but the amount taken into account from such other sources shall be limited to the amount, if any, by which \$50,000 (\$25,000 in the case of a married individual filing a separate return) exceeds the sum of the gains to which subdivisions (i) and (ii) of this subparagraph apply.

(2) *Special rules.* For purposes of subparagraph (1) of this paragraph—

(i) A binding contract entered into on or before October 9, 1969, means a contract, whether written or unwritten, which on or before that date was legally enforceable against the taxpayer under applicable law. If on or before October 9, 1969, a taxpayer grants an irrevocable option or irrevocable contractual right to another party to buy certain property and such other party exercises that option or right after October 9, 1969, the sale of such property is a sale pursuant to a binding contract entered into on or before October 9, 1969. The application of this subdivision may be illustrated by the following example:

Example. During 1964, A, B, and C formed a closely held corporation, and A was appointed as president of the organization. On July 1, 1964, A received for consideration 100 shares of common stock in the corporation subject to the agreement that, if A should retire from the management of the corporation or die, A or his estate would first offer his shares of stock to the corporation for purchase and that, if the corporation did not buy the stock within 60 days, the stock could be sold to any party other than the corporation. On September 1, 1970, A retired from the management of the corporation and offered his shares to the corporation for purchase. Pursuant to the agreement, the corporation purchased A's stock on September 30, 1970. A's sale of such stock was pursuant to a binding contract entered into on or before October 9, 1969.

(ii) A contract which pursuant to subdivision (i) of this subparagraph constitutes a binding contract entered into on or before October 9, 1969, does not cease to qualify as such a contract by reason of the fact that after October 9, 1969, there is a modification of the terms of the contract such as a change in the time of performance, or in the amount of the debt or in the terms and mode of payment, or in the rate of interest, or there is a change in the form or nature of the obligation or the character of the security, so long as the taxpayer is at all times on and after October 9, 1969, legally bound by such contract. The application of this subdivision may be illustrated by the following examples:

Example (1). On August 1, 1969, A sold certain capital assets to B on the installment plan and elected to return the gain therefrom under section 453, the agreement providing for payments over a period of 2 years. At the time of the sale these assets had been held by A for more than 6 months. On July 31, 1970, A and B agreed to a modification of the terms of payment under the sales agreement, the only change in the contract being that the installment payments due after July 31, 1970, would be paid over

a 3-year period. For purposes of this paragraph the payments received by A after July 31, 1970, are considered amounts received from the sale on August 1, 1969. (See section 483 for rules with respect to interest on deferred payments.)

Example (2). On April 1, 1969, A sold certain capital assets to B on the installment plan and elected to return the gain therefrom under section 453, the agreement providing for payments over a period of 3 years. At the time of the sale these assets had been held by A for more than 6 months. On March 31, 1970, C assumed B's obligation to pay the balance of the installments which were due after that date. For purposes of this paragraph any installment payments received by A after March 31, 1970, from C are considered amounts received from a sale made on or before October 9, 1969.

Example (3). On May 1, 1969, A offers to sell certain capital assets to B if B accepts the offer within 1 year, unless it is previously withdrawn by A. B accepts the offer on November 1, 1969, and the transaction is consummated shortly thereafter. For purposes of this paragraph, any payment received by A pursuant to the sale is not considered an amount received from a sale made on or before October 9, 1969, or from a sale pursuant to a binding contract entered into on or before that date.

(iii) An amount which is considered under section 402(a)(2) or 403(a)(2) as gain of the taxpayer from the sale or exchange of a capital asset held for more than 6 months shall be treated as gain subject to the provisions of section 1201(d)(1) and subdivision (i) of such subparagraph, but only if on or before October 9, 1969 (a) the employee with respect to whom such amount is distributed or paid or was otherwise separated from the service and (b) died or the employee the terms of the plan required, elected that total distributions or amount payable be paid to the taxpayer within 1 taxable year.

(iv) Gain described in section 1201(d)(1) or (2) with respect to a partnership, estate, or trust, which is required to be included in the gross income of a partner in such partnership, or of a beneficiary of such estate or trust, shall be treated as such gain with respect to such partner or beneficiary. Thus, for example, if during 1974 a partnership which uses the calendar year as its taxable year receives amounts which give rise to section 1201(d)(1) gain, a partner who uses the fiscal year ending June 30 as his taxable year shall treat his distributive share of such gain as subsection (d) gain for his taxable year ending June 30, 1975, even though such share is distributed to him after December 31, 1974. See § 1.706-1.

(v) An individual shall be considered married for purposes of subdivision (iii) of such subparagraph if for the taxable year he may elect with his spouse to make a joint return under section 6013(a).

(vi) In applying such subparagraph for purposes of section 21(a)(1) long-term capital gains arising from amounts received before January 1, 1970, shall be taken into account if such amounts are received during the taxable year.

(g) **Illustrations.** The application of this section may be illustrated by the following

examples in which the assumption is made that section 56 (relating to minimum tax for tax preferences) does not apply:

Example (1). A, a single individual, has for the calendar year 1954 taxable income (exclusive of capital gains and losses) of \$99,400. He realizes in 1954 a gain of \$50,000 on the sale of a capital asset held for 19 months and sustains a loss of \$20,000 on the sale of a capital asset held for 5 months. He has no other capital gains or losses. Since the alternative tax is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is \$74,298. The tax is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$99,400
Net long-term capital gain (100 percent of \$50,000)	\$50,000
Net short-term capital loss (100 percent of \$20,000)	20,000
Excess of net long-term capital gain over the net short-term capital loss	30,000
	129,400
Deduction of 50 percent of excess of net long-term capital gain over the net short-term capital loss (section 1202)	15,000
Taxable income	114,400
Tax under section 1	80,136
Alternative Tax Under Section 1201(b)	
Taxable income	\$114,400
Less 50 percent of excess of net long-term capital gain over net short-term capital loss (section 1201(b)(1))	15,000
Taxable income exclusive of capital gains and losses	99,400
Partial tax (tax on \$99,400)	66,798
Plus 25 percent of \$30,000	7,500
Alternative tax under section 1201(b)	74,298

Example (2). A husband and wife, who file a joint return for the calendar year 1970, have taxable income (exclusive of capital gains and losses) of \$100,000. In 1970 they realize \$200,000 of net long-term capital gain in excess of net short-term capital loss, including long-term capital gains of \$100,000 arising from sales consummated in 1968 the income from which is returned on the installment method under section 453, and long-term capital gains of \$50,000, arising in respect of distributions from X corporation made before October 10, 1970, which were pursuant to a plan of complete liquidation adopted on October 9, 1969. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable for 1970 is the alternative tax, that is, \$97,430 plus the tax surcharge under section 51. The tax (without regard to the tax surcharge) is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$100,000
Net section 1201 gain (excess of net long-term capital gain over the net short-term capital loss)	200,000
Total	300,000

Deduction of 50 percent of net section 1201 gain (section 1202)	100,000
Taxable income	200,000
Tax under section 1	110,980
Alternative Tax Under Section 1201(b)	
(1) Net section 1201 gain	\$200,000
(2) Subsection (d) gain:	
Section 1201(d)(1)	100,000
Section 1201(d)(2)	50,000
Total subsection (d) gain	150,000
(3) Net section 1201 gain in excess of subsection (d) gain (\$200,000 less \$150,000)	50,000
(4) Tax under section 1201(b)(1):	
(i) Taxable income	\$200,000
(ii) Less: 50% of item (1)	100,000
(iii) Amount subject to tax under section 1201(b)(1)	100,000
Partial tax (computed under section 1)	45,180
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$150,000])	37,500
(6) Tax under section 1201(b)(3) on item (3):	
Tax under section 1 on taxable income (\$200,000)	\$110,980
Less: Tax under section 1 on sum of item (4) (iii) \$100,000 plus 50% of item (2) (\$75,000)	93,780
(Total \$175,000)	
Tax under section 1201(c)(1)	17,200
Limitation under section 1201(c)(2)(A) (29½% of item (3))	14,750
(7) Alternative tax under section 1201(b)	97,430

Example (3). A husband and wife, who file a joint return for the calendar year 1971, have taxable income (exclusive of capital gains and losses) of \$80,000. In 1971 they realize long-term capital gain of \$30,000 arising from a sale consummated on July 1, 1969, the income from which is returned on the installment method under section 453. From securities transactions in 1971 they have long-term capital gains of \$60,000 and a short-term capital loss of \$10,000. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is, \$55,140. The tax is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$80,000
Net long-term capital gains (100% of \$90,000)	\$90,000
Net short-term capital loss (100% of \$10,000)	10,000
Net section 1201 gain	30,000
Total	160,000

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Deduction of 50% of net section 1201 gain (section 1202)	40,000	
Taxable income	120,000	
Tax under section 1	57,580	
Alternative Tax Under Section 1201(b)		
(1) Net section 1201 gain	\$80,000	
(2) Subsection (d) gain:		
Section 1201(d)(1)	30,000	
Section 1201(d)(2)		
Section 1201(d)(3) (\$50,000 less \$30,000)	20,000	
Total subsection (d) gain	50,000	
(3) Net section 1201 gain in excess of subsection (d) gain (\$80,000 less \$50,000)	30,000	
(4) Tax under section 1201(b)(1):		
(i) Taxable income	\$120,000	
(ii) Less: 50% of item (1)	40,000	
(iii) Amount subject to tax under section 1201(b)(1)	80,000	
Partial tax (computed under section 1)	33,340	
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$50,000])	12,500	
(6) Tax under sec. 1201 (b)(3) on item (3):		
Tax under sec. 1 on taxable income (\$120,000)	\$57,580	
Less: Tax under sec. 1 on sum of item (4) (iii) (\$80,000) plus 50% of item (2) (\$25,000) (Total \$105,000)	48,280	
Tax under section 1201(c)(1)	9,300	
Limitation under section 1201(c)(2)(B) (32½% of item (3))	9,750	9,300
(7) Alternative tax under section 1201(b)	55,140	

Example (4). A husband and wife, who file a joint return for the calendar year 1973, have taxable income (exclusive of capital gains and losses) of \$250,000. In 1973 they realize long-term capital gains (not described in section 1201(d)(1) or (2)) of \$140,000 and a short-term capital loss of \$50,000. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is, \$172,480. The tax is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$250,000
Net long-term capital gains (100% of \$140,000)	\$140,000
Net short-term capital loss (100% of \$50,000)	50,000
Net section 1201 gain	90,000
Total	340,000
Deduction of 50% of net section 1201 gain (section 1202)	45,000
Taxable income	295,000

Tax under section 7	177,480	
Alternative Tax Under Section 1201(b)		
(1) Net section 1201 gain	\$90,000	
(2) Subsection (d) gain:		
Section 1201(d)(1)		
Section 1201(d)(2)		
Section 1201(d)(3)	50,000	
Total subsection (d) gain	50,000	
(3) Net section 1201 gain in excess of subsection (d) gain (\$90,000 less \$50,000)	40,000	
(4) Tax under section 1201(b)(1):		
(i) Taxable income	\$295,000	
(ii) Less: 50% of item (1)	45,000	
(iii) Amount subject to tax under section 1201(b)(1)	250,000	
Partial tax (computed under section 1)	145,980	
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$50,000])	12,500	
(6) Tax under section 1201(b)(3) on item (3):		
Tax under section 1 on taxable income (\$295,000)	\$177,480	
Less: Tax under section 1 on sum of item (4) (iii) (\$250,000) plus 50% of item (2) (\$25,000) (Total \$275,000)	163,480	14,000
(7) Alternative tax under section 1201(b)	172,480	

PAR. 12. Section 1.1222 is amended by adding paragraph (11) to section 1222, and by revising the historical note, to read as follows:

§ 1.1222 Statutory provisions; other terms relating to capital gains and losses.

Sec. 1222. Other terms relating to capital gains and losses. . . .

(11) *Net section 1201 gain.* The term "net section 1201 gain" means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

[Sec. 1222 as amended by sec. 230(b), Rev. Act 1934 (78 Stat. 100); sec. 511(a) and 513(c), Tax Reform Act 1969 (83 Stat. 635, 643)]

PAR. 13. Section 1.1222-1 is amended by adding a new paragraph (h) to read as follows:

§ 1.1222-1 Other terms relating to capital gains and losses.

(h) The term "net section 1201 gain" means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

PAR. 14. Section 1.1375-1 is amended by redesignating paragraph (e) as (f), by adding example (5) to paragraph (f) as so redesignated, and by inserting a new paragraph (e), as follows:

§ 1.1375-1 Special rules applicable to capital gains.

(e) *Shareholder's pro rata share of subsection (d) gain.* Long-term capital gains of an electing small business corporation for any taxable year which are gains described in section 1201(d)(1) or (2) with respect to such corporation shall be treated as gains which are gains described in section 1201(a)(1) or (2) with respect to a shareholder to the extent of his pro rata share of such gains. A shareholder's pro rata share of such gains is the amount which bears the same ratio to the shareholder's pro rata share of long-term capital gain (as determined under paragraph (b) of this section) for such year as the corporation's long-term capital gains for such year which are described in section 1201(d)(1) or (2) bear to the excess of the corporation's net long-term capital gain over its net short-term capital loss for the taxable year. If such ratio is one or greater, the shareholder's pro rata share of gains described in section 1201(d)(1) or (2) shall be equal to his pro rata share of long-term capital gain for such taxable year.

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (5). An electing small business corporation which has three equal shareholders has net long-term capital gains in excess of net short-term capital loss of \$50,000 for its taxable year 1971. The corporation has long-term capital gain described in section 1201(d)(1) of \$15,000. The corporation has taxable income and current earnings and profits of \$90,000 (including such net capital gain of \$60,000). During the taxable year, the corporation pays cash dividends of \$90,000 (\$30,000 to each shareholder). With respect to such distributions each shareholder will be deemed to have received long-term capital gain of \$20,000 (\$90,000/\$90,000 of \$60,000) and ordinary income of \$10,000. In the case of such distributions, each shareholder will be deemed to have received \$5,000 (\$15,000/\$60,000 × \$20,000) of gain described in section 1201(d)(1).

PAR. 15. Section 1.1378 is amended by revising section 1379 (b) and (c) (3), and the historical note, to read as follows:

§ 1.1378 Statutory provisions; tax imposed on certain capital gains.

Sec. 1378. Tax imposed on certain capital gains. . . .

(b) *Amount of tax.* The tax imposed by subsection (a) shall be the lower of—

(1) An amount equal to the tax, determined as provided in section 1201(a), on the amount by which the excess of the net long-term capital gain over the net short-term capital loss of the corporation for the taxable year exceeds \$25,000, or

(2) An amount equal to the tax which would be imposed by section 11 on the taxable income (computed as provided in section 1373(d)) of the corporation for the taxable year if the corporation was not an electing small business corporation.

No credit shall be allowable under part IV of subchapter A of this chapter (other than under section 39) against the tax imposed by subsection (a). In applying section 1201(a)(1) (A) and (B) for purposes of paragraph (1), the \$25,000 limitation shall first

be deducted from the amount (determined without regard to this subsection) subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount (determined without regard to this subsection) subject to tax in accordance with section 1201(a)(1)(A).

(c) *Exceptions.* * * *

(3) *Property with substituted basis.* If—

(A) But for paragraph (1) or (2), subsection (a) would apply for the taxable year,

(B) Any long-term capital gain is attributable to property acquired by the electing small business corporation during the period beginning 3 years before the first day of the taxable year and ending on the last day of the taxable year, and

(C) The basis of such property is determined in whole or in part by reference to the basis of any property in the hands of another corporation which was not an electing small business corporation throughout all of the period described in subparagraph (B) before the transfer by such other corporation and during which such other corporation was in existence;

then subsection (a) shall apply for the taxable year, but the amount of the tax determined under subsection (b) shall not exceed a tax, determined as provided in section 1201(a), on the excess of the net long-term capital gain over the net short-term capital loss attributable to property acquired as provided in subparagraph (B) and having a basis described in subparagraph (C).

[Sec. 1378 as added by sec. 2(a), Act of April 14, 1966 (Public Law 89-389, 80 Stat. 113); as amended by sec. 511(c)(4), Tax Reform Act 1969 (83 Stat. 638)]

PAR. 16. Section 1.1378-3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.1378-3 Amount of tax.

(a) *In general.* If an electing small business corporation is subject to the tax imposed by section 1378 for a taxable year, the amount of such tax for such year is, except as provided in paragraph (b) of this section, the lower of—

(1) An amount equal to the tax, determined as provided in section 1201(a), on the amount (25 percent of such amount in the case of a taxable year beginning before January 1, 1970) by which the excess of the net long-term capital gain over the net short-term capital loss of the corporation for the taxable year exceeds \$25,000 or

(2) An amount equal to the amount of tax which would be imposed by section 11 on the taxable income of the corporation for the taxable year (computed under section 1373(d)) if the corporation were not an electing small business corporation.

In applying section 1201(a)(1)(A) and (B) for purposes of subparagraph (1) of this paragraph for any taxable year ending after December 31, 1969, and beginning before January 1, 1975, the \$25,000 limitation shall first be deducted from the amount (determined without regard to this paragraph and section 1378(b)) subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount (determined without regard to this paragraph and section 1378(b)) subject to tax in accordance with section 1201(a)(1)(A).

(b) *Exception.* If an electing small business corporation is subject to the tax imposed by section 1378 for a taxable year, and

(1) The election under section 1372(a) which is in effect with respect to such corporation for such year has been in effect for the corporation's three immediately preceding taxable years, or

(2) An election under section 1732(a) has been in effect with respect to such corporation for each of its taxable years for which it has been in existence,

the amount of such tax for such year shall not exceed a tax, determined as provided in section 1201(a), on the excess of the net long-term capital gain over the net short-term capital loss attributable to property with a substituted basis (see section 1378(c)(3) and paragraph (b) of § 1.1378-2). In the case of a taxable year beginning before January 1, 1970, the amount of such tax for such year shall not exceed 25 percent of such excess.

[FR Doc. 74-30276 Filed 12-26-74; 8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD,
DEPARTMENT OF TRANSPORTATION

[CGD 74-241]

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT AREAS

Eleventh Coast Guard District

These amendments revise the description of the two Captain of the Port Areas and the two Marine Inspection Zones of the Eleventh Coast Guard District in Part 3 of Title 33, Code of Federal Regulations.

The boundary of the Los Angeles Captain of the Port Area that is described in § 3.55-60 is revised to coincide with the Los Angeles-Long Beach Marine Inspection Zone that is described in § 3.55-10. The boundary of the San Diego Captain of the Port Area that is described in § 3.55-55 is revised to coincide with the San Diego Marine Inspection Zone that is described in § 3.55-15. The revision retains the inland boundary description of the two Marine Inspection Zones, but divides the coastal islands by a new line. The descriptions of the two Captain of the Port Areas, as amended by this document, are transferred to §§ 3.55-10 and 3.55-15. Accordingly, § 3.55-55 and 3.55-60, which contain the present descriptions of the areas, are deleted.

Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rule making requirements in 5 U.S.C. 553(b)(3)(A), and since these amendments announce an existing change in Coast Guard organization, they are effective immediately under 5 U.S.C. 553(d)(3).

In accordance with the foregoing, Part 3 of Chapter I of Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 3.55-10 is revised to read as follows:

§ 3.55-10 Los Angeles-Long Beach Marine Inspection Zone and Captain of the Port Area.

(a) The Los Angeles-Long Beach Marine Inspection Office is located in Wilmington, California. The Los Angeles-Long Beach Captain of the Port Office is located in Long Beach, California.

(b) The boundary of the Los Angeles-Long Beach Marine Inspection Zone and Captain of the Port Area starts in California at the intersection of the San Luis Obispo County-Santa Barbara County boundary and the sea and follows this boundary to the Kern County line; thence north and west along the Kern County-San Luis Obispo County boundary to the Kings County line; thence eastward along Kings County-Kern County boundary to the Tulare County line; thence eastward along the Tulare County-Kern County boundary to the Inyo County line; thence eastward along the Kern County-Inyo County boundary to the San Bernardino County line; thence eastward along the Inyo County-San Bernardino County boundary to the Nevada State line; thence northwest along the California-Nevada boundary to its intersection with the Nye County-Clark County, Nevada boundary; thence north along this boundary to the Lincoln County line; thence east along the Clark County-Lincoln County boundary to the Arizona State line thence north along the Nevada-Arizona boundary to the Utah State line; thence north along the Nevada-Utah boundary to its intersection with the Iron County-Washington County, Utah boundary; thence eastward along this boundary to the Kane County line; thence north and east along the Kane County-Iron County boundary to the Garfield County line; thence northeast along the Garfield County-Iron County boundary to the Beaver County line; thence east along the Beaver County-Garfield County boundary to the Piute County line; thence east along the Piute County-Garfield County boundary to the Wayne County line; thence east along the Garfield County-Wayne County boundary to the San Juan County line; thence northward along the San Juan County-Wayne County boundary to the Grand County line; thence east along the San Juan County-Grand County boundary to the Colorado State line; thence south along the Utah-Colorado boundary to the Arizona State line; thence south along the Arizona-New Mexico boundary to the International boundary; thence west along the International boundary to its intersection with the Imperial County-San Diego County, California boundary; thence north along this boundary to the Riverside County line; thence west along the Riverside County-San Diego County boundary to the Orange County line; thence southwest along the Orange County-San Diego County boundary to the sea. The Los Angeles-Long Beach Marine Inspection Zone and Captain of the Port Area also includes the California islands south and east of the

northern boundary of the Eleventh Coast Guard District, that is described in section 3.55-1 of this part (a line drawn from the intersection of latitude 34°58' N. and the California coastline southwestward, bearing approximately 229° T), and north and west of a line drawn 255° T from latitude 32°22.5' N, longitude 117°35.7' W (San Mateo Point).

2. Section 3.55-15 is revised to read as follows:

§ 3.55-15 San Diego Marine Inspection Zone and Captain of the Port Area.

(a) The San Diego Marine Inspection Office and San Diego Captain of the Port Office are located in San Diego, California.

(b) The boundary of the San Diego Marine Inspection Zone and Captain of the Port Area is the boundary of San Diego County, California, starting and ending at the sea, but also including the California islands south and east of a line that is drawn 255° T from latitude 32°22.5' N, longitude 117°35.7' W (San Mateo Point).

§ 3.55-55 [Removed]

§ 3.55-60 [Removed]

3. Sections 3.55-55 and 3.55-60 are deleted.

(5 U.S.C. 552; 14 U.S.C. 633; 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b))

Effective date: These amendments are effective December 31, 1974.

Dated: December 23, 1974.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc. 74-30337 Filed 12-27-74; 8:45 am]

[CGD 74-291]

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

Great Lakes Exemptions

The purpose of this amendment to the vessel bridge-to-bridge radiotelephone regulations is to extend the termination date of the exemption in the regulations that applies to vessels navigating on the Great Lakes.

The exemption was proposed in the FEDERAL REGISTER on November 11, 1972 (CGD 72-223P; 37 FR 24043) and issued on December 22, 1972 (CGD 72-223R; 37 FR 28632).

Because there was a need to evaluate actual operational results of the use of bridge-to-bridge radiotelephone by vessels in all U.S. waters and a possible resulting need to amend this exemption based on that evaluation, the exemption specified a termination date—January 1, 1975. This early termination date in 1975 was selected because an amendment to the United States-Canadian agreement for the promotion of safety on the Great Lakes by means of radio was expected to become effective sometime in 1975. That amendment has been ratified and becomes effective May 6, 1975.

By letter dated September 6, 1974, the Lake Carriers' Association has requested

that the Coast Guard permanently exclude the Great Lakes from the applicability of the bridge-to-bridge radiotelephone regulations. Pending final determination of this request and the commencement of operations on the Great Lakes under the amended radiotelephone agreement, the termination date for the present exemption is extended by this document to May 6, 1975. I find that notice and public procedure on this amendment is impracticable, unnecessary and contrary to the public interest because evaluation of operations on the Great Lakes and their connecting and tributary waters has shown an excellent safety record attributable to the voice radio system in use. Termination of the exemption without adequate opportunity for vessels on the Great Lakes to prepare to comply with the regulations may disrupt commerce or adversely affect marine navigation safety. This amendment is effective in less than 30 days from its publication in the Federal Register because it grants or recognizes an exemption or relieves a restriction.

In consideration of the foregoing, Part 26 of Title 33 of the Code of Federal Regulations is amended by striking out the date "January 1, 1975" in § 26.09 and inserting the date "May 6, 1975" in place thereof.

This amendment becomes effective December 31, 1974.

(Vessel Bridge-to-Bridge Radiotelephone Act, 85 Stat. 164; 33 U.S.C. 1201-1208; 49 CFR 1.46(c)(2))

Dated: December 23, 1974.

O. W. SILER,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 74-30336 Filed 12-27-74; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 4—DEPARTMENT OF AGRICULTURE

PART 4-50—DISPUTES AND APPEALS
Procurement; Miscellaneous Amendments
Correction

In FR Doc. 74-29847, appearing at page 44203 in the issue of Monday, December 23, 1974, the effective date should be changed to read, "December 23, 1974".

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 14-3—PROCUREMENT BY NEGOTIATION

Determinations and Findings

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Part 14-3 of Chapter 14 of Title 41 of the Code of Federal Regulations is hereby amended as stated herein.

It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rulemaking process. However, the amendments herein are administrative procedures for preparing and processing

determinations and findings justifying negotiation and other determinations which are required to be made. Because the amendments are entirely administrative in nature, the public rulemaking process is waived in this instance. Part 14-3 is amended to read as stated below effective immediately.

RICHARD R. HITE,
Deputy Assistant Secretary
of the Interior.

DECEMBER 10, 1974.

1. 41 CFR, Part 14-3 (Interior Procurement Regulations) is amended by adding the following to the table of contents:

Subpart 14-3.3—Determinations, Findings, and Authorities

Sec.
14-3.305 Form and requirements of determinations and findings
14-3.305-50 Preparation of determinations and findings
14-3.305-51 Summary of required determinations and findings
AUTHORITY: (sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

2. 41 CFR, 14-3 (Interior Procurement Regulations) is amended by adding the following:

Subpart 14-3.3—Determinations, Findings, and Authorities

§ 14-3.305 Form and requirements of determinations and findings.

§ 14-3.305-50 Preparation of determinations and findings.

(a) Determination and findings required by statute or regulation shall be prepared in accordance with §§ 14-3.305-50 and 14-3.305-51 of this chapter.

(b) Determinations and findings shall state the name of the bureau or office and location, identify the document as a "Determination and Findings," and state the purpose, such as "To Negotiate an Individual Contract under 41 U.S.C. 252(c)(2)." It must be dated and signed by the appropriate official.

(c) A determination and findings made by the Secretariat under section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)) shall not constitute approval of a program or of specific procurements. It will authorize procurement by negotiation, in lieu of formal advertising, of the property or services described only when, in accordance with established regulations and procedures, it is determined that the procurement has been authorized and funds have been made available for the purpose.

(d) The "findings" are a series of factual statements in logical order which lead to the conclusion and justify the determination that the proposed action falls within the purview of statutory or regulatory authority. The purpose of the procurement action and its estimated cost are usually stated in the first paragraph of the findings. The other stated facts and circumstances shall clearly justify the determination.

(e) The "determination" is a statement that the proposed action falls within the purview of statute or regulation. The language of the determination is usually stated verbatim from the source of authority.

(f) The "authorization" constitutes the last paragraph of the determination and findings. It is a statement that the procuring activity is authorized to proceed with the proposed contract action and cites the authority under which the authorization is made.

(g) When practicable, all determinations pertaining to a single procurement should be consolidated in one determination and findings.

(h) In special cases determinations may be made for classes of procurements or contracts. Class determinations and findings shall be restricted to circumstances where greater operational flexibility in the processing of determinations and findings is necessary to minimize delays where several contracts may be issued. Each class determination and findings shall specify an effective period which shall not exceed one year. Before negotiating a contract under the authority of a class determination and findings, the contracting officer shall establish for each contract that procurement by formal advertising is not feasible and practicable.

(i) Determinations and findings for signature of or approval by the Secretary shall be transmitted to the Assistant Secretary—Management by memorandum giving an explanation of the proposed transaction. The memorandum ordinarily should be brief; however, it should be sufficient, when read with the determination and findings, to fully explain the proposed transaction. All such submissions shall be routed through the Office of Management Services for review and approval.

§ 14.3.305-51 Summary of required determinations and findings.

This section is designed to serve as a guide to determinations and findings required in specific circumstances.

(a) *Rejection of all bids.* The determination to reject all bids and readvertise, pursuant to section 303(b) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 253), requires a determination and findings signed by the contracting officer. A list of circumstances justifying rejection and cancellation is found in § 1-2.404-1(b) of this title. (See also § 14-3.305-51(c) (14) of this chapter.)

(b) *Award prior to resolution of a protest.* The determination to make award prior to resolution of a protest by the General Accounting Office (GAO) requires advance approval by the Director of Management Services and a determination and findings signed by the contracting officer pursuant to § 14-2.407-8 of this chapter. The determination shall specify those factors which will not permit a delay in award until issuance of a ruling by the GAO.

(c) *Circumstances permitting negotiation.* These circumstances are numbered

in the same sequence as section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)), and Subpart 1-3.2 of this title. Subparts 1-3.2 of this title and 14-3.2 of this chapter contain authorizations and limitations which generally are not repeated in this § 14-3.305-51.

(1) *National emergency.* Covers contracts to assist labor surplus areas, unilateral set-asides for small business concerns and to further the Balance of Payments program. The Secretary has made a blanket determination concerning all such contracts in § 14-3.201(a) of this chapter.

(2) *Public exigency.* The determination and findings will be signed by the contracting officer. A typical format is contained in Appendix A of this Subpart 14-3.3.

(3) *Purchases not in excess of \$10,000.* A determination and findings is not required.

(4) *Personal or professional services.* A determination and findings is not required; however, certain contracts for services require advance Departmental approval in accordance with Part 14-55 of this chapter.

(5) *Services of educational institutions.* A determination and findings is not required.

(6) *Purchases outside United States.* A determination and findings is not required.

(7) *Medicines or medical supplies.* The determination and findings will be signed by the contracting officer.

(8) *Property purchased for authorized resale.* The determination and findings will be signed by the contracting officer.

(9) *Subsistence supplies.* A determination and findings is not required.

(10) *Impracticable to secure competition by formal advertising.* The determination and findings will be signed by the contracting officer. (Special requirements pertaining to unsolicited proposals involving noncompetitive procurement are contained in § 14-4.5101-3(f) of this chapter.) A typical format is contained in Appendix B of this Subpart 14-3.3.

(11) *Property or services for experimental, developmental, or research work.* The determination and findings will be signed by heads of bureaus and offices for contracts not exceeding \$25,000. Determinations and findings will be signed by the Assistant Secretary—Management for contracts which exceed \$25,000. Determination and findings shall state whether the contract will be for research, development, testing or experimentation; or the making or furnishing of property or supplies for research, development, testing or experimentation; or for a combination of these. The format for a class determination and findings contained in Appendix C of this Subpart 14-3.3 may be modified to state the specific purpose.

(12) *Purchases not to be publicly disclosed.* The determination and findings will be signed by the Secretary.

(13) *Standardization and interchangeability of technical equipment.* The determination and findings will be signed by the Secretary.

(14) *Negotiation after advertising.* The authority to negotiate contained in § 1-3.214 of this title involves two separate circumstances.

(i) The determination and findings may be signed by the contracting officer when it is determined that bid prices after advertising therefor are not reasonable (either as to all or some part of the requirement).

(ii) The determination and findings that bid prices after advertising therefor have not been independently arrived at in open competition will be signed by the head of the bureau or office or his delegate.

(iii) When it is considered desirable, the determination normally made by the contracting officer to reject all bids because the bid prices are unreasonable (see § 14-3.305-51(a) of this chapter) may be combined with the determination and findings under this § 14-3.305-51 (c) (14).

(iv) A recommended format for such determinations and findings is contained in Appendix D of this Subpart 14-3.3.

(15) *Otherwise authorized by law.* As needed under other law.

(d) *Fixed-price contracts.* Generally, determinations and findings are not required to use fixed-price type contracts except as set forth in this § 14-3.305-51 (d).

(1) *Fixed-price incentive contracts.* Determinations and findings will be signed by the head of the bureau or office or his delegate. Determination requirements are set forth in §§ 1-3.302(b) and 1-3.404-4(c) of this title.

(2) *Retroactive price redetermination after completion.* A determination and findings is not required; however, such contracts must be approved in writing by the head of the bureau or office prior to execution. (See § 1-3.404-7(c) of this title.)

(e) *Cost-type contracts.* The following determinations and findings are required pursuant to Section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, (41 U.S.C. 254 (b)) prior to entering into cost-type contracts:

(1) *Cost reimbursement contracts.* The determination and findings will be signed by the head of the bureau or office or his delegate. Determination requirements are set forth in §§ 1-3.302(b) and 1-3.405-1(c) of this title.

(2) *Cost-plus-a-fixed-fee contracts and cost-plus-incentive-fee contracts.* In addition to the determination and findings set forth in § 14-3.305-51(e) (1), these types of contracts require a determination and findings signed by the head of the bureau or office or his delegate that statutory fee limitations will not be exceeded as set forth in § 1-3.405-5(c) of this title.

(f) *Use of letter contracts.* Letter contracts may be used only upon a determination and findings by the head of a bureau or office that no other type of contract is suitable pursuant to § 1-3.408 of this title. Determinations and findings and related contractual material must be

submitted to the Assistant Secretary—Management for approval prior to use of a letter contract in accordance with § 14-3.408 of this chapter.

(g) *Other types of contracts.* The use of a time and materials contract or a labor-hour contract pursuant to §§ 1-3.406-1 and 1-3.406-2 of this title requires a determination and findings signed by the contracting officer.

(h) *Waiver of cost or pricing data provisions.* The determination that the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law (see § 1-3.307-3(b) of this title) will be signed by the contracting officer. The determination and findings required to waive the requirements for cost or pricing data and certification thereof pursuant to § 1-3.307-3(b) of this title will be signed by the Assistant Secretary—Management.

(i) *Waiver of audit of proposals.* The determination and findings required to waive the audit of proposals which exceed \$100,000 pursuant to § 1-3.809(b) of this title shall be submitted to the Director of Management Services for approval as required by § 14-63.106 of this chapter.

(j) *Rejection of foreign bids.* Rejection of a foreign bid for reasons of the national interest requires a determination and findings signed by the Secretary pursuant to Section 10a of the Buy American Act (41 U.S.C. 10a-d) as implemented by §§ 1-6.103-3 and 1-6.104 of this title. (See §§ 14-6.105 and 14-18.604 of this chapter for excepted commodities.)

(k) *Balance of payments program.* Any determination and findings required for deviations, exceptions, and restrictions pertaining to contracts involving the Balance of Payments Program pursuant to §§ 1-6.803, 1-6.805, and 1-6.806 of this title will be made by the heads of bureaus and offices.

(l) *Waiver of Examination of Records clause.* Omission of the Examination of Records clause in contracts and subcontracts with foreign contracts and subcontracts requires a determination and findings signed by the Assistant Secretary—Management. The required determinations are found in paragraphs (a) (1) and (a) (2) of § 1-6.1001 of this title.

(m) *Advance payments.* (1) The determination, findings, and authorization required to make advance payments pursuant to § 1-30.405 of this title will be signed by the contracting officer after the determination, findings and authorization and the contract provisions relating to advance payments are approved by the Assistant Secretary—Management as set forth in § 14-30.406 of this chapter. (See also §§ 1-30.410 and 1-30.414-2 of this title.)

(2) The class determination and findings contained in § 14-30.410 of this chapter authorizes the making of advance payments to educational institutions for research projects in accordance

with FMC 73-7 (formerly OMB Circular No. 101).

(n) *Nonresponsible prospective contractor.* The determination of nonresponsibility of a prospective contractor pursuant to § 1-1.1204-1 of this title will be made by the contracting officer.

Appendix A—Determinations and Findings To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(2)

FINDINGS

1. The [bureau or office] has requirements for the repair or correction of misfabricated transmission tower steel furnished under Contract No. _____ and being erected on line A to B under Contract No. _____. The estimated cost of repairs is \$15,000.

2. Immediate completion of line A to B is critical to meet scheduled energization dates and to avoid payment of delay damages under the construction contract's Suspension of Work clause.

3. The use of formal advertising to procure the above described services would require the preparation of detail specifications and drawings. This would unduly delay the construction and operation of line A to B and would render the Government responsible for additional costs of construction.

DETERMINATION

Based upon the foregoing findings, I hereby determine within the meaning of Section 302(c)(2) of Federal Property and Administrative Services Act of 1949, as amended, (41 U.S.C. 252(c)(2)), as implemented by FPR 1-3.202, that the proposed contract is for services for which the public exigency will not permit the delay incident to formal advertising.

Based on the foregoing findings and determination, procurement by negotiation of the work described herein is authorized.

Contracting Officer

Date

Appendix B—Determinations and Findings To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(10)

FINDINGS

1. The [bureau or office] has a requirement for specialized support equipment for the maintenance of its AMCO control operation. The estimated cost of the equipment is \$75,000.

2. The equipment to be purchased must be specifically designed for compatibility with the existing AMCO system to assure proper operation of the system.

3. It is impossible to draft for an invitation for bids adequate specifications or any other adequately detailed description of the required specialized equipment.

4. The use of formal advertising to procure the above described equipment would be impracticable. The market has been surveyed and only ABC Company, manufacturer and designer of the AMCO system, was found to have sufficient familiarity with the design and operational characteristics of the basic equipment to furnish the support equipment required.

DETERMINATION

Based on the foregoing findings, I hereby determine within the meaning of section 302(c)(10) of the Federal Property and Administrative Services Act of 1949, as amended, (41 U.S.C. 252(c)(10)), as implemented by FPR 1-3.210, that the proposed contract is for

equipment for which it is impracticable to secure competition.

Contracting Officer

Date

Appendix C—Determination and Findings To Negotiate a Class of Cost-Type Contracts for Experimental, Developmental and Research Work Under 41 U.S.C. 252(c)(11), 254, and 257

FINDINGS

1. Under the authorized program of the [Bureau of Office] contracts will be required for research, development, testing and experimentation associated with [conservation of water and development of water resources projects; development of new and more efficient methods of mining, preparing and utilizing coal] in the following program activities:

a. [List specific program activities in appropriate paragraphs]

2. The programs are authorized under [site statutory authority and/or appropriation acts].

3. The contracts contemplated under this authorization relate to theoretical analysis, exploratory studies and experimentation, developmental work and the practical application of investigative findings and theories of a scientific or technical nature; as well as services, tests, evaluations and reports necessary or incidental to experimental, developmental, or research work.

4. The proposed contracts may be entered into with profit or nonprofit organizations that are technically and scientifically qualified in the respective fields and which are prepared to furnish personnel, materials, and supplies necessary to perform the work required.

5. The use of formal advertising would not be feasible nor practical because no reliable specifications exist nor is it possible to properly prepare such specifications that would adequately allow competition on a formally advertised basis.

6. The exact nature and extent of the work covered by the proposed contracts and the precise method of performing that work cannot be established in advance but must be freely subject to improvisation and change as the work progresses. The cost of performing the work cannot be accurately forecast so as to permit the undertaking of such work for a fixed price without inclusion of excessive amounts to cover risk factors.

DETERMINATIONS

Based upon the foregoing findings, I hereby determine within the meaning of section 302(c)(11), 304, and 307 of the Federal Property and Administrative Services Act of 1949, as amended, that:

1. The proposed contracts are for research, development, testing, or experimentation pursuant to the authorized program cited above.

2. The proposed contracts are for research, development, testing, or experimentation within the meaning of section 302(c)(11) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)(11)).

3. It is impractical to obtain such contemplated research, development, testing, and experimentation efforts by means of formally advertised contracting procedures.

4. In accordance with section 304(a) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 254(a)), the type of contracts contemplated will promote the best interests of the Government.

5. In accordance with section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 254(b)), it is impractical to secure property or services of the kind or quality required without the use of cost, cost-plus-fixed fee or incentive type contracts and these methods of contracting are likely to be less costly to the Government than other methods of contracting.

Upon the basis of these findings and determinations, I hereby authorize the negotiation of a class of cost, cost-plus-fixed fee or incentive type contracts for the procurement of the research, development, testing, or experimentation efforts described above pursuant to [cite statutory authorization] and sections 302(c)(11), 304, and 307 of the Federal Property and Administrative Services Act of 1949, as amended [41 U.S.C. 252(c)(11), 254, and 257].

This authorization to enter into a class of contracts: (a) does not foreclose requirements for other findings and determinations that are necessary in connection with procurement by negotiation; and (b) does not authorize the procurement by negotiation of supplies or services within the class which feasibly and practically could be procured through formal advertising.

Negotiated contracts involving construction as a major part of the scope of work shall not be awarded under this determination and findings without review and approval by the Office of the Assistant Secretary—Management.

This class authorization will expire [on June 30, 19—; one year from the date of execution hereof].

Assistant Secretary—
Management
Date

2. Within the meaning of section 302(c)(14) of the Federal Property and Administrative Services Act of 1949, as amended, and as implemented by FPR 1-3.214 and FPR 1-3.301, negotiation of a contract (or contracts) is justified.

Upon the basis of these findings and determinations, I hereby authorize:

1. Rejection of all bids and cancellation of IFB No. [Delete this paragraph when paragraph 4 of the Findings is used.]

2. Negotiation of a contract (or contracts) for procurement of the [product; work; services] described above pursuant to section 302(c)(14) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)(14)).

Contracting Officer.

Date

[FR Doc.74-30119 Filed 12-27-74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19909; FCC 74-1351]

ALASKAN FREQUENCY ASSIGNMENTS Single Sideband High Frequency Stations

Report and order. In the matter of amendment of Parts 81, 83, 87, 89, 91, 93, and 97 of the Commission's rules to provide a common emergency frequency for use by single sideband high frequency stations licensed under these Parts in the State of Alaska; amendment of Part 2 to provide for such operations in the Table of Frequency Allocations. (RM-2164)

1. In response to the petition for Rule Making filed by the State of Alaska, a notice of proposed rule making in the above-captioned matter was released on January 4, 1974, and published in the FEDERAL REGISTER on January 7, 1974 (39 FR 1280). The dates for filing comments and reply comments thereto have passed.

2. Comments were filed by:

Alaska Aviation Radio, Inc. (AARI)
American Radio Relay League (ARRL)
Central Committee for Communications Facilities of the American Petroleum Institute (API)
Civil Air Patrol (CAP)
Defense Civil Preparedness Agency (DCPA)
North Pacific Marine Radio Council (NPMRC)
State of Alaska, Department of Public Works, Division of Communications (DIVISION)
U.S. Citizens Radio Council (CRC).
Reply comments were filed by:
DIVISION—Associated Public-Safety Communications Officers (APCO)

All of the commentators supported the Commission's proposal for an emergency frequency for the State of Alaska.

3. **Definition of emergency:** ARRL suggested that the emergency be interpreted very broadly since the conditions in Alaska are variable and what constitutes an emergency in sparsely populated areas would not be an emergency in densely populated areas. CAP stated that any station in Alaska should be able to use the emergency frequency. API and APCO suggested that emergency communications be limited to the safety of life and property. Our intent is to make

this emergency frequency available to as many stations as possible with minimum operational restrictions. The vast area of the State of Alaska, the unusual and hazardous conditions, and the differences in climate, make a precise definition of emergency impractical and undesirable. Division has proposed to exercise operational control over the network, and can determine where abuses to the system are prevalent. Should abuses occur which degrade the system, remedial action can be taken by the Commission.

4. **Frequencies for emergency:** API has stated that 4383.8 kHz will only provide for short range coverage during daylight hours and does not provide a thoroughly reliable HF emergency communication. API further states that a member has monitored 5167.5 kHz for several years and that experience indicates that this would be a better frequency for an emergency channel than the frequency proposed. DCPA suggested that another frequency between 7,000-8,000 kHz be selected and simultaneous transmission on both frequencies be made for complete coverage. APCO also commented on the need for additional frequencies. ARRL suggested selection of a frequency between 3,500-4,000 kHz, near the high end of the amateur band, in order that amateurs may use existing equipment. The Commission, in this matter, originally addressed itself to providing a single short range frequency for use by individuals under emergency situations. The selection of an HF frequency was made to obtain ground wave propagation where line of sight (VHF) propagation would be inadequate due to geographic obstructions. DIVISION petitioned the Commission to designate a single frequency for this purpose and to make the frequency available to all stations operating in this band, except public correspondence stations, to increase the number of stations monitoring the frequency and thereby improve the probability of the emergency communications being received. We recognized that additional frequencies would be required to provide reliable communications over long distances, however, clearance of a complement of HF frequencies would require an extensive period of time in view of the extreme congestion in the HF band, particularly in the 4-12 MHz portion of the spectrum. We believe that DIVISION will develop an experience factor after operating the emergency network which will assist the Commission in selection and clearance of additional frequencies. We are, therefore, not terminating this proceeding at this time.

5. **Deletion of 4383.8 KHZ from Alaska public fixed stations:** API and CAP did not believe that deletion of this frequency was necessary, provided that the station would cease operation on this frequency when an emergency was in progress. DCPA, APCO and DIVISION believe that it is necessary to delete the frequency. We are not persuaded that deletion of the frequency from the Alaska Public Fixed Service is necessary at this time, in view of our intent to make the frequency available to as many stations as

Appendix D—Determination and Findings To Negotiate a Contract After Advertising Under 41 U.S.C. 302(c)(14) and 307

FINDINGS

1. The [procuring activity] solicited bids under IFB No. [] dated [] for [describe and state location or delivery point]. Low bids were received from the following:

[List the bidders and bid amounts of the three lowest responsive bids.]

2. The Government estimate for the work was \$ [The Architect-Engineer estimate was \$].

3. Since the bids received under this solicitation significantly exceeded the cost estimates, there is reason to believe that the bidders which responded did not fully comprehend the scope of the work as defined in the specifications of the IFB.

4. All bids have been rejected and the IFB cancelled, pursuant to sections 303(b) and 307 of the Federal Property and Administrative Services Act of 1949, as amended, after determining it to be in the public interest. [Delete this paragraph when paragraph 1 of Determinations is used.]

5. The requirement for the [product; work; service] continues to exist.

DETERMINATIONS

Based upon the foregoing findings, I hereby determine that:

1. Within the meaning of section 303(b) of the Federal Property and Administrative Services Act of 1949, as amended, and as implemented by FPR 1-2.404-1(b)(5) and FPR 1-3.302(c), the otherwise acceptable bids received are unreasonable as to price and that it is in the public interest to reject all bids; and [Delete this paragraph when paragraph 4 of Findings is used.]

possible and have as many stations as possible maintain a watch on the emergency frequency. In this regard it is noted that some Federal Government stations wish to participate in the emergency network and that Federal agencies will cooperate toward making the frequency useful. However, they intend to continue their use of their own assignments on a day-to-day basis. In the event that experience shows that continued use of the frequency for public correspondence derogates the emergency frequency, the Commission will take necessary steps to rectify the situation.

6. *Exclusion of all services requiring the purchase of equipment:* NPMRC has stated that reliable communications intra Alaska are rapidly being developed, and will undoubtedly meet the need for emergency services in the near future. For this reason, any service not presently equipped for use of SSB HF frequencies should be excluded. Participation in the emergency system is purely voluntary. Some stations in these services, Part 93, may have a need for an emergency communications capability and should not be prohibited from participating. Any station not desiring to participate, simply does not purchase the equipment. The entire system is predicated on the premise that a maximum number of stations in all services provide a voluntary monitoring of the emergency frequency for safety of life and property in Alaska.

7. *Exclusion of CB:* CRC stated that the Commission's remarks concerning CB in the Notice of Proposed Rule Making, reflect a bad light on all CB users, whereas much of the rule violations cited in the NPRM were perpetrated by unlicensed users of the citizens service. Citizens Radio Service users have worked hard in emergency communications with such fine groups as ALERT and REACT. For the above reasons, CRC requests the Commission to remove all reference to rule violations by CB and include CB in the emergency service in Alaska. ARRL supported the Commission in deleting CB from the NPRM and stated that any service not authorized SSB HF equipment be deleted. DIVISION reconsidered its inclusion of CB stating as follows: "Recognizing the necessity for network discipline, the State reconsiders the inclusion of the Citizens Radio Service in the emergency network. The feeling is that this service should not be included, as it could jeopardize the success of the network, based on past operating rule violations." The Commission acknowledges the contribution of CB in ALERT and REACT, however, CB is basically an undisciplined service. Past experience at 27 MHz has shown that a large number of persons operate outside of the authorized frequency band in violation of the Commission's rules. A transmitter authorized to operate on 4383.8 kHz would probably be capable of operation on frequencies from 3 to 6 MHz. Unauthorized operation on these frequencies would present a severe interference potential to other authorized stations; therefore,

the Commission is not including CB in the Alaska emergency system.

8. *Operator licenses:* ARRL stated that all licensed operators should be permitted to participate and that no special endorsement be required. The Commission does not propose to require any special operator endorsement or license. The license requirements for the particular service will be adequate for operation on the emergency frequency.

9. *Requirement for an operational plan:* DIVISION has submitted an operational plan and proposes to provide State and regional net control of the Alaska emergency frequency to assure receipt and transmission of all traffic deemed to be necessary for the protection of life and property. The operational plan is endorsed by the Commission in its entirety and is included as Attachment I to this Report and Order. The State of Alaska will maintain adequate logs to evaluate the emergency network and determine the need for additional frequencies and either addition or deletion of additional services authorized to use the emergency frequency. This plan makes adequate provisions for monitoring, practice drills and net control and there is no requirement to make specific provisions for these items in the Commission's rules. ARRL, API and CAP have all stated the desirability of establishing net control stations. The operational plan of the State of Alaska includes most of these suggestions and any changes to this plan should be submitted to the State of Alaska for their comments or inclusion in the plan.

10. *Further notice of proposed rule making:* API recommends that the Commission review all comments submitted in response, prepare the appropriate rule amendments and then solicit further comments by a Further Notice of Proposed Rule Making. DIVISION, in their reply comments, believes that the Commission has adequate information to act on the single emergency frequency 4383.8

kHz. The Commission is not persuaded that any benefits would accrue from a Further Notice of Proposed Rule Making. It would be more desirable to initiate operation on a single frequency and observe any additional requirements necessary to satisfy specific operating problems experienced.

11. The State of Alaska will submit a report on the operation of the Alaska Emergency System after a period of one year. In this report, any additional frequency requirements, addition or deletion of stations in any service and any other operational problems will be reported. After analysis of this report, the Commission will issue a Further Notice of Proposed Rule Making or other appropriate Order to improve the system herein adopted or to terminate this proceeding.

12. Accordingly, it is ordered, That, pursuant to the authority contained in section 4(i) and 303 (c), (h), and (r) of the Communications Act of 1934, as amended, Parts 2, 81, 83, 87, 89, 91, 93, and 97 of the Commission's rules are amended effective January 27, 1975, as set forth in the attached Appendix.

Adopted: December 10, 1974.

Released: December 20, 1974.

(Secs. 4, 303, 48 Stat., as amended 1068, 1082; 47 U.S.C. 154, 303)

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

Parts 2, 81, 83, 87, 89, 91, 93, and 97 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. Section 2.106 is amended by adding a new footnote US 212 as follows:

§ 2.106 Table of Frequency Allocations.

FEDERAL COMMUNICATIONS COMMISSION

Band (kHz)	Service	Class of station	Frequency (kHz)	Nature of services of stations
(7)	(8)	(9)	(10)	(11)
4361-4438 (US212).....	Maritime mobile.	Coast.....	4383.8	Coast. (telephony) (Alaska emergency frequency).
US Footnotes				

US212 The use of the carrier frequency 4383.8 kHz (assigned frequency 4385.2 kHz), maximum power 150 watts peak envelope power, may be authorized to non-government stations in the amateur, fixed and mobile services and to Government stations, in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

2. Section 81.304(a) table is amended by adding a condition of use and new paragraph (b) (9) added to read as follows:

§ 81.304 Frequencies available.

(a) * * *

Carrier frequency (kHz)	See section	Conditions of use
4383.8.....	81.307	9, 11, 29, 48, 51, 61

(b) * * *

(9) The frequency 4383.8 kHz, maximum power 150 watts PEP, may be used

by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

3. Section 83.351(a) table is amended by adding a condition of use and new paragraph (b) (6) added to read as follows:

§ 83.351 Frequencies available.

Carrier frequency (kHz)	See section	Conditions of use
4383.8	83.370	6, 15, 17

(6) The frequency 4383.8 kHz, maximum power 150 watts PEP, may be used by any station authorized under this part, within 50 nautical miles of the State of Alaska, to communicate with any other station authorized in the State of Alaska for emergency communications.

PART 87—AVIATION SERVICES

4. Section 87.297(a) is amended by adding the frequency 4383.8 kHz and a new footnote, as follows:

§ 87.297 Alaska.

Frequencies available:	
kHz	kHz
3411	4383.8
4668	4696

¹Daytime only.

²The frequency 4383.8 kHz, maximum power 150 watts PEP, may be used by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency.

PART 89—PUBLIC SAFETY RADIO SERVICE

5. Section 89.101 is amended by designating present paragraph (b) as paragraph (b) (1) and adding a new paragraph (b) (2), as follows:

§ 89.101 Frequencies.

(2) The frequency 4383.8 kHz, maximum power 150 watts PEP, may be authorized to any station in the Public Safety Radio Services for emergency communications in the State of Alaska. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

6. Section 89.161 is amended by designating the existing paragraph as (a) and adding paragraph (b) as follows:

§ 89.161 Communication with other stations.

(a) In those cases which require cooperation or coordination of activities, stations in the Public Safety Radio Services may communicate with stations in other services and U.S. Government stations.

(b) The frequency 4383.8 kHz may be used by stations in the Public Radio Services to communicate with any station authorized in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

PART 91—INDUSTRIAL RADIO SERVICES

7. Section 91.101 is amended by designating the present paragraph as paragraph (a) and adding new subparagraph (b) as follows:

§ 91.101 Frequencies.

(b) The frequency 4383.8 kHz, maximum power 150 watts PEP, may be authorized to any station in the Industrial Radio Services for emergency communications in the State of Alaska. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

8. Section 91.151 is amended by adding a footnote to § 91.151(a) (1) as follows:

§ 91.151 Permissible communications.

(1) Any communication related directly to the safety of life or the protection of property¹:

PART 93—LAND TRANSPORTATION RADIO SERVICES

9. Section 93.101 is amended by designating the present paragraph (a) as paragraph (a) (1) and adding a new paragraph (2) as follows:

§ 93.101 Frequencies.

(2) The frequency 4383.8 kHz, maximum power 150 watts PEP, may be authorized to any station in the Land Transportation Radio Services for emergency communications in the State of Alaska. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

¹The frequency 4383.8 kHz may be used by any station authorized under this part to communicate with any other station in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

10. Section 93.151 is amended by adding a footnote to § 93.151 (a) (1) as follows:

§ 93.151 Permissible communications.

(1) Any communication relating directly to the safety of life or the protection of important property¹:

PART 97—AMATEUR RADIO SERVICES

11. § 97.61 is amended by adding a new frequency and limitation of use in paragraph (a) and adding new limitation (b) (13) as follows:

§ 97.61 Authorized frequencies and emissions.

Frequency band	Emissions	Limitations (see paragraph (b))
kHz		
4383.8	A3J/A3A	13

(b) Limitations:

(13) The frequency 4383.8 kHz, maximum power 150 watts, may be used by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

12. Section 97.107 is amended by adding a footnote to § 97.107(a) as follows:

§ 97.107 Operation in emergencies.

(a) All transmissions within all designated amateur communications bands¹ other than communications relating directly to relief work, emergency service, or the establishment and maintenance of efficient amateur radio networks for the handling of such communications shall be suspended. Incidental calling, answering, testing or working (including casual conversations, remarks or messages) not pertinent to constructive handling of the emergency situation shall be prohibited within these bands.

¹The frequency 4383.8 kHz may be used by any station authorized under this part to communicate with any other station in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

STATE OF ALASKA
ALASKA DISASTER OFFICE

COMMUNICATIONS PLAN STATE AND REGIONAL
NET CONTROL ALASKA EMERGENCY FREQUENCY
4383.8 KILOHERTZ

I. Mission.

To provide for the State and Regional Net Control of the Alaska Emergency Frequency to assure the receipt and transmission of all traffic deemed immediately essential for the safety of life and property; for alleviation of human suffering and hardship and the general welfare of the public.

II. Situation and assumptions.

A. There are many remote villages and other communities within the State that are totally dependent on radio communications.

B. These communities rely on radio as the only source of receiving and transmitting emergency traffic.

C. Emergency communications among the various stations licensed to individuals, companies, and governmental agencies are difficult and often impossible due to the previous lack of a common emergency frequency.

D. Communities which have land line facilities for emergency communications often lose those capabilities due to disruptions caused by storms, floods, fires, earthquakes, and other forces of man and nature. These communities require a backup communications system on a frequency which is monitored 24-hours a day.

E. The State of Alaska and other governmental agencies have responsibilities of providing warning information to all communities in Alaska in the event of storms, tsunamis, fires, and other threats to life and property occur. This warning information must be transmitted over the most rapid and immediately available communications systems that exist.

F. The State of Alaska and other governmental agencies have requirements to respond to emergency requests for assistance and to relay this information to the appropriate agencies for prompt response.

G. Because of these factors, the State has applied to the Federal Communications Commission for a single sideband high frequency of 4383.8 Kilohertz as a common emergency frequency for use by individuals, companies, radio amateurs, and governmental agencies.

III. Organization and responsibilities.

A. State.—1. *Alaska Disaster Office.* The Alaska Disaster Office headquarters in Anchorage will function as State Net Control. The Alaska Disaster Office will, through cooperation with the State Division of Communications and the Division of Alaska State Troopers, establish regional net control stations; conduct tests of the State and regional net control stations exercise its authority to shut down stations in the event that two or more stations respond simultaneously to an emergency call; and regulate traffic in the event of two or more simultaneous emergency calls.

As with the National and Alaska Warning System, the Alaska Disaster Office will be State Control during normal working hours and transfer State Control to the Alaska State Troopers during non-working hours.

2. *Alaska State Troopers.* The Alaska State Troopers at Anchorage, by agreement, will operate the State Net Control of the Alaska Emergency Frequency during Alaska Disaster Office non-duty hours and regulate any and all emergency traffic.

The Alaska State Troopers will monitor and regulate traffic from the regional net controls at Fairbanks, Nome, Kodiak, and Juneau.

3. *Division of communications.* The Division of Communications will establish the emergency frequency and license the State Control Station in Anchorage and the regional net control stations at Fairbanks,

Nome, Kodiak, and Juneau. The Division of Communications will maintain the equipment and antenna systems at these locations and future sites as deemed necessary.

The Division of Communications will establish the Alaska Emergency Frequency in selected State radio systems in the cities and villages throughout the State.

The Division of Communications will provide the State Net Control with information concerning the regional net control stations, call signs, locations and addresses, and operating schedules.

4. *Other stations.* Individuals, including amateur radio operators (but excluding citizens band radio), businesses, industry, and governmental agencies are encouraged to establish the Alaska Emergency Frequency in their single sideband equipment so that they may receive and transmit warning and other emergency traffic to or from a regional on the State Net Control.

IV. CONCEPT OF OPERATIONS

A. *STATE NET CONTROL.—1. Monitoring.* The Alaska Disaster Office in Anchorage will monitor the Alaska Emergency Frequency during normal hours of operation (8 a.m. to 4:30 p.m. Monday through Friday, excluding weekends and holidays). The Alaska State Troopers will monitor the Alaska Emergency Frequency during Alaska Disaster Office non-working hours.

2. *Tests.* The Alaska Disaster Office will initiate tests of the regional monitor stations to assure operational readiness of the State-wide system and for disseminating information to monitoring systems and the public.

3. *Authority to shut down stations.* The Alaska Disaster Office/Alaska State Troopers will exercise their authority as State Net Control to shut down stations in the event two or more stations respond simultaneously to an emergency call to assure the message is delivered to the net control station nearest the originating call.

4. *Regulation of traffic.* The Alaska Disaster Office/Alaska State Troopers, as State Net Control, will regulate the traffic over the Alaska Emergency Frequency in the event two or more stations transmit simultaneous emergency calls by assigning a priority according to the urgency of the calls.

5. *Warning.* The Alaska Disaster Office/Alaska State Troopers will utilize the Alaska Emergency Frequency for warning to communities, governmental agencies, and the public in the event of threats to life and property. These threats include, but are not limited to, storms, tsunami watch and warning, floods, fires, and other factors that could affect the safety and well-being of Alaskan residents.

6. *Receipt of Emergency Calls.* The Alaska Disaster Office/Alaska State Troopers will relay emergency calls and traffic to the appropriate agency responsible for handling the particular assistance requested in accordance to existing emergency plans and authorities.

7. *Records.* The Alaska Disaster Office/Alaska State Troopers will maintain a record/log, including time and date, of all incoming and outgoing calls. All requests for assistance will contain a brief insert as to the action taken.

B. *REGIONAL NET CONTROLS.—1. Monitoring.* The regional net control stations will monitor the Alaska Emergency Frequency 24-hours a day.

2. *Tests.* The regional net control stations will respond to State Control tests, and so far as practicable, conduct regional tests within their region with others who have the emergency frequency.

3. *Authority to shut down stations.* The regional net control stations have the authority to shut down other stations operating on the Alaska Emergency Frequency in the event traffic within their area interferes with the

receipt or dissemination of emergency information.

4. *Regulation of traffic.* The regional net control stations will regulate traffic within their area in the event two or more stations transmit simultaneous emergency calls by assigning a priority according to the urgency of the calls.

5. *Warning.* The regional net controls will utilize the Alaska Emergency Frequency for the receipt and transmission of warning information that poses a threat to life and/or property.

6. *Receipt of emergency calls.* The regional net control stations will relay emergency calls and traffic to the appropriate agency responsible for handling the type of emergency assistance requested in accordance with existing emergency plans and authorities.

7. *Records.* The regional net control stations will maintain a record/log, including time and date, of all calls received and transmitted. A brief notation of the action taken will be included on requests for assistance.

[FR Doc. 74-30074 Filed 12-27-74; 8:45 am]

[Docket No. 20020]

PART 76—CABLE TELEVISION SERVICES

Line Extension Provisions in Franchises

1. On April 15, 1974, the Commission adopted its clarification of rules and notice of proposed rulemaking, FCC 74-384, 46 FCC 2d 175 (1974), in which we proposed, among other things, to clarify certain references in section 76.31 (a) (1) and (2) of the Rules. Specifically, we were concerned with the "adequacy and feasibility of construction arrangements" and the requirement that the cable operator must "equitably and reasonably extend energized trunk cable." We stated that ideally the entire franchise area should be wired. However, we acknowledged that this goal is not always reasonably attainable and that, as a result, many franchises contain "line extension" clauses or other provisions limiting the area in which the system operator is required to provide service. As stated in the Clarification, supra at paragraph 63, our experience has revealed that:

[I]n many cases line extension policies were set without any consultation with the citizens involved, and at least a few instances have been found where even the franchising authority did not fully comprehend the effect of its actions.

Also, the Commission has received numerous complaints from persons affected by line extension policies who request Commission relief. Therefore, we adopted, as part of the Clarification, a notice of proposed rulemaking in Docket No. 20020, proposing that § 76.31(a) (1) and (2) be amended to require a showing that any line extension policy was developed knowledgeably and publicly. In so doing, we stated that unique problems were involved in determining an appropriate approach to the question of cable system construction requirements. Therefore, we recognized that local involvement was essential and that, "it would be a mistake to attempt to specify a nation-wide rule on this point. Indeed, it might be very difficult to create any such rule even on a state by state level." Delineation of the franchise area has been a matter of local, rather

than federal, control. The purpose of this proceeding is to reassert our position in this regard and to make franchising authorities explicitly aware of their responsibility to knowledgeably and publicly determine the appropriate franchise area.¹

2. We are now in receipt of comments and replies from a number of parties, which can be classified generally into the following groups: the cable television industry, the broadcast industry, municipalities, regulatory commissions, and public interest organizations. Comments between and within groups varied as to the amount and type of federal and local control to be asserted. However, a majority of the parties expressed agreement with our position that there should be primarily local control over line extension policy.

3. The cable television industry's comments generally favored a position that allows local franchising authorities to determine whether a line extension policy is necessary. Most comments acknowledged that familiarity with unique local conditions is essential to a well-reasoned policy. Granville Cablevision and Emco CATV stated that the subject of this proceeding presents a national problem but that a uniform policy would be disastrous. While many parties were willing to leave factors to be considered to the franchising authority, several parties advocated adoption of a federal "bottom line" standard to gauge the reasonableness of local policies. The primary concern in this regard was that a policy be fully compensatory to the system on an individual area basis. These standards would be applicable to systems already in operation. New systems, of course, would be required to comply with the guidelines in the franchising process. Buckeye Cablevision et al. explained that the cable system should recover return cost plus a reasonable profit for all areas served. In reply comments, TM Communications maintained that the relevant factors to be considered are costs vs. revenues derived, rather than other criteria such as density formulas based on homes per square mile. In this connection, several parties contended that development of a line extension policy is closely related to subscriber rates, and thus best considered by the franchising authority which also deals with that subject. The cable industry comments uniformly endorsed a position that the Commission not adopt a policy imposing specific public notification guidelines on franchising authorities. A group of 82 cable television companies emphasized that local authorities' experience in promulgating public notice requirements for zoning, public works, and highway

improvement projects makes them eminently qualified to determine a suitable notice requirement for their constituency. The National Cable Television Association maintained that the Commission should only require an assurance from the franchising authority and the cable company that the public and those citizens affected were adequately informed of the policy before it was adopted. Following this position, several parties suggested that § 76.31(a) be amended to require that any construction arrangements and line extension policy be adopted "knowledgeably and publicly."

4. The majority of municipalities commenting opposed the establishment of a federal standard for line extension policies. They asserted that localities are best suited to determine whether an entire franchise area should be constructed, and if not, what criteria should be considered in promulgating a line extension policy. A uniform policy, the City of Eugene, Oregon maintained, would be contrary to the spirit of the current cable television rules of experimentation, would prohibit cities with experience in this area from developing their own policy, and could be based on inaccurate assumptions. The City of Dallas, Texas argued that not only should there be no federal standard, but also there should be no Commission requirement for inclusion or exclusion of a line extension policy in a franchise. On the other hand, a small number of municipalities urged Commission adoption of their own line extension policies. The City of Knoxville, Tennessee requires that,

... the franchisee construct and operate a system to provide service to all parts of the city having a density of at least fifty (50) residential dwelling units per mile. At his option the franchisee may wire areas with a lesser density. Whenever the franchisee receives a request for service from at least ten (10) subscribers within fifteen hundred (1500) feet of its system he shall extend his system to them at no cost other than his usual connection fee. The 1500 feet is measured along the public way or easement and does not include the necessary service drop to the subscriber's residence.

For semi-rural, suburban areas, the City of San Diego, California directed attention to California's line extension rules for electric utilities. Several municipalities, as well as the National League of Cities, agreed that the Commission's ideal of cable service to the entire franchise area should be achieved whenever possible. The City of Burbank, California suggested that a franchisee is adhering to this goal if he has a long range plan to serve as much of the franchise area as possible and his present activities have been adopted in a public proceeding. Many of the commenting municipalities contended that the present "full public proceeding" requirement of § 76.31(a) (1) of the rules is sufficient to assure that all interested parties are given the opportunity to participate in the formulation of any construction arrangements and line extension policies. Several parties, including the Metropolitan Council of Governments, the City of Los Angeles, and the City of New York,

stated that the addition of specific Commission requirements for public notification would duplicate and even conflict with existing local or state provisions for due process. To require specific notice to parties affected by a line extension policy is preferential and may violate due process considerations, the National League of Cities warned. The League of Wisconsin Municipalities suggested that the Commission recognize state statutes embodying due process requirements. While these parties opposed implementation of additional public notice criteria, several municipalities advocated that the Commission require assurances in the certifying process that any line extension policy was adopted knowledgeably and publicly.

5. The New York State Commission on Cable Television argued that federal requirements for construction and line extension policies should not be imposed. Formulation of this policy should be left to the franchising authority in the first instance. However, the New York Commission maintained that it is opposed to any rule which would preclude exercise of its authority to impose requirements over line extension policy development. It claimed that it could take into account differing local situations and play a constructive role in resolving disputes. The New York Commission agreed that local governments should be subject to procedural safeguards as alluded to in this proceeding. However, the State Commission did not suggest that specific criteria be imposed by this Commission, but rather maintained that assurances would be sufficient. Several parties expressed agreement with the Federal/State-Local Advisory Committee Report discussion of Issue 14 that in the great majority of cities, the uneconomic area of the community is sufficiently small to allow its inclusion in the service area and to be served at uniform rates. When the entire area cannot be served, the policy should be determined in an informed and fair manner. When the variation in costs is too substantial to justify an "averaging in" approach, the parties suggested that a line extension policy be developed. The Cable Television Rates and Service Committee of the Texas Utility Advisory Council agreed with the Commission that promulgation of any necessary line extension policy should be left to the municipality, provided that adequate public notification procedures are followed.

6. The only comments received from the broadcast industry were from the National Association of Educational Broadcasters. This Association recognized that the ideal of service to the entire franchise area is not always possible, and suggested that the Rules be amended to require assurances from the franchisee and franchisor that adequate public notice is given of the policy before adoption and the proceeding include participation by representatives from the affected area. The Association expressed the hope that Commission guidelines in this area would lead to more specific criteria and a "national grid system." The National News-

¹ We take this opportunity to emphasize that the franchise requires cable systems to accomplish significant construction within one year of the issuance of the certificate of compliance, and that thereafter, cable service be made available to a substantial percentage of the franchise area each year. We consider as reasonable a clause requiring that cable service be extended to 20 percent of the franchise area annually.

paper Association filed comments urging the establishment of Commission standards to insure adequate notification of governments' line extension policies. These requirements should provide for newspaper public notices, including maps delineating the areas to be served.²

7. Commenting public interest groups unanimously expressed the opinion that either federal or state guidelines or procedures should be imposed to govern line extension policy adoption. While the Civil Liberties Union of Alabama suggested specific Commission criteria, the National Citizens Committee for Broadcasting advocated only federal guidelines. The Philadelphia Community Cable Coalition supported regional franchising and state-wide planning for cable development. Several parties stressed the importance of system interconnection capabilities, especially in the case of multiple franchises. Continued concern was expressed for insurance of service to the center city. The Philadelphia Coalition urged the Commission to establish guidelines for permissible rate charges based on line extension policies, and suggested that profitable, existing systems be required to extend service to outlying areas at normal rates. The public interest groups recommended adoption of a public notice requirement, and many suggested that more stringent criteria than those proposed be adopted. The National Black Media Coalition maintained that each person affected by a proposal be sent a certified letter regarding the public proceeding.

8. The Cable Television Information Center found value in the instant proceeding's objective of delineating the cable operators' and franchising authorities' roles in promulgating line extension policies. However, CTIC suggested that confusion results from use of the phrase "equitably and reasonably extend energized trunk cable" in § 76.31(a)(2). It recommends the substitution of the phrase "make cable service available." Although it has a recommended approach for franchising authorities to follow in making delineations, CTIC does not recommend that the Commission adopt its guidelines.

9. An important underlying purpose of this proceeding was to highlight for franchising authorities the importance of a well-conceived cable line extension policy and to impress upon them that their decision in this regard is a very crucial one. It is for this reason that the question of construction arrangements must be fully explored in the franchising process. The implications of the decisions reached by the municipalities are far-reaching, as evidenced by the substantial number of public inquiries and complaints received by the Commission on this subject. Substantively, we are concerned that the ideal of service to the entire franchise area has been fully con-

sidered by the franchising authority. If such an arrangement has been found to be feasible, it should be provided for in the franchise. If extension of service to the entire area has been found to be impractical by rational, logical standards, a line extension policy should then be established. The various comments have illustrated that local conditions and needs vary substantially and we note that several approaches have been implemented depending on those factors. For example, some cities grant multiple franchises to different franchisees for discrete sections of the franchise area to accomplish the result of complete coverage of the area. Other municipalities find it necessary to adopt line extension policies. Such delineations of the area to be served are based on some stated formula. These policies also take economic factors into consideration. Cable systems may be required to serve areas which overall are capable of maintaining the system's economic viability, may be subject to line extension requirements to serve only areas which can be reasonably expected to be viable, or may be required to serve outlying areas but with authorization charge subscribers the additional costs involved in extension of service. These various approaches seem to be adequate and they exemplify how different solutions to the problem of service are necessary depending on the local circumstances. To attempt to prescribe a federal standard that would encompass all of these factors would be impossible. Likewise, we do not find a present need to issue specific Commission guidelines in this regard. While concern was expressed that local franchising authorities may not possess or acquire the necessary expertise in this area to adopt an appropriate line extension policy, we have confidence that they will be assisted by a knowledgeable public and the forces of the market place. In addition, localities are at liberty to seek advice from a wealth of outside sources, including this Commission.

10. Procedurally, we wish to assure that the franchising authority has given the citizens of the entire area, particularly those directly affected by the policy considered, an opportunity to participate in the decision-making process. This, of course, requires that citizens be given adequate public notification. We note that several parties have advocated specific Commission requirements in this regard, while others recommended that the method of notification be left to the franchising authorities. Still others felt that the present Commission due process requirements in § 76.31(a)(1) were sufficient. We agree with those advocating a posture leaving the specifics of notice requirements to the franchising authorities. In so doing, we recognize that municipalities have existing procedures for insuring public participation in other areas of local concern. We would suggest that like procedures may be appropriate in this instance. Again, however, this is a matter for the franchising authority to decide. It should be noted that, while we are not here requiring a specific type

of notification relating to line extension, in a separate rulemaking (Docket No. 20019) we are looking into the necessity for general requirements relating to public notice of the entire franchising process. Nevertheless, we are adopting a minor amendment of § 76.31(a)(2) to insure that the public is specifically notified of and given the opportunity to participate in public proceedings developing line extension policies. This amendment will be applicable to those franchises granted or renewed subsequent to the effective date of this rule change.

11. In addition, we find merit in the suggestion that the requirement in § 76.31(a)(2) of the rules for extension of energized trunk cable "equitably and reasonably" be changed to provide that cable service be made available. This recommendation will be incorporated in our amendment.

12. Since we deem the issue of construction arrangements and service to the franchise area to be crucial, this subject is expected to be fully considered in the franchising process. Any alteration in an existing franchise, reducing the service area, would constitute a significant amendment to the franchise area which, in turn, would require a new certificate of compliance or the first-time filing for such a certificate (if a pre-March 31, 1972 franchise is involved). Therefore, compliance with the requirements contained in this amendment will be considered by the Commission in the normal certifying process, as prescribed in § 76.31(a) of the rules. We will require assurances that the public was informed of any possible exclusions or conditional wiring provisions before their adoption and was permitted to participate in the proceedings.

13. The Commission discussed several problems with regard to cable service in unincorporated areas of a county in paragraphs 65 and 66 of the Clarification, supra. The question of line extension becomes most acute in unincorporated areas surrounding a municipality. Oftentimes, it is logical for the cable system serving the city to extend its service to these outlying areas. In fact, many times these areas can only be served practically by the cable system operating in the city. In such instances, the county or other franchising authority may not find it necessary to conduct a complete county franchise proceeding to permit an existing cable system to extend service to the areas in question. In many such instances the existing cable operator is practically and economically the sole source from which service can be obtained. And its obligations to the public and to subscribers as well as its qualifications to operate have already been passed on when it was franchised by the municipality. In such instances where county authorization is required for line extension to small areas immediately contiguous to a municipality and the existing operator is the only feasible source of service, we see no need for the county to conduct a full franchise proceeding of the type our rules would otherwise require. It should be sufficient in the certification process for the county

² The Newspaper Association cited the State and Local Fiscal Assistance Act of 1972, Pub. L. 82-512, 92nd Cong., 2d Sess., and the implementing regulations, 31 CFR § 51.13(a), as precedent for such a requirement.

franchise authority to assure us that the line extension involved has its approval. Such approval should include a specific indication of the area to be served.

14. Our amendment will require that the adoption of any policy requiring less than complete service to the franchise area be adopted only after full public proceedings, which includes notice of consideration of such a policy. This amendment is being promulgated to assure adequate consideration in the franchising process of the vital question of service to the franchise area. We are not, however, prescribing a specific Commission standard to be followed in every instance. Rather, the criteria considered and the type of public notification procedures followed will continue to be left to the franchising authority. As stated earlier, an important purpose of this proceeding was to highlight the importance of decisions being made on line extension policies. We feel that the amendment we are adopting today accomplishes that result.

15. The amendment adopted will be applicable only to franchises granted after August 1, 1975. We have chosen this date to allow sufficient time for local authorities to become aware of the amendment, and with a view toward using it in connection with any other rule changes that may result from the other pending proceedings relating to the Clarification, supra.

Authority for the rule amendment adopted herein is contained in sections 2, 4 (i) and (j), 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That effective August 1, 1975, Part 76 of the Commission's Rules and Regulations is amended as set forth below.

It is further ordered, That this proceeding is terminated.

Adopted: December 17, 1974.

Released: December 20, 1974

Secs. 2, 4, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1066, 1082, 1083, 47 U.S.C. 152, 154, 303, 307, 308, 309.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 76.31(a), subparagraph (2) is amended to read as follows:

§ 76.31 Franchise standards.

(a) * * *

(2) The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter reasonably make cable service available to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority; *Provided, however*, That where a franchise contains a policy of construction requiring less than complete wiring of the

franchise area, such policy shall be adopted only after a full public proceeding (as contemplated by paragraph (a) (1) of this section) which includes specific notice of the consideration of such a policy.

NOTE: The proviso to this paragraph is applicable only to franchises granted after August 1, 1975.

[FR Doc.74-30311 Filed 12-27-74;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-106; Amdt. No. 173-81]

PART 173—SHIPPERS

Fire Extinguishers

On May 15, 1974, the Hazardous Materials Regulations Board ("The Board") published Amendment No. 173-81 under Docket HM-106 (39 FR 17313). One portion of the amendment pertained to the construction of fire extinguishers under a provision for partial exemption from the regulations found in § 173.306(c). The amendment becomes effective on January 31, 1975.

Two petitions have been received by the Board, both containing requests that a one-year extension of effective date be granted to deplete existing stocks of rods, slugs, and partially completed fire extinguishers. The petitioners stated that a combined total of 709,882 pounds of aluminum in various stages of processing could not produce cylinders having a burst pressure of six times the charged pressure at 70° F., and would have to be scrapped in order to comply with the amended regulation. They also state they are presently shipping fire extinguishers that are manufactured in accordance with the regulations in effect at this time. The Board has carefully considered the petitions and has decided that a grant of additional time to achieve compliance with the burst pressure requirements is warranted. Also, the Board has reconsidered the amendment in its entirety and is making certain changes to clarify its application and to simplify the marking requirements.

Paragraph (c) (4) of the amendment is being revised to make it clear that the "six times burst" requirement does not apply to fire extinguishers manufactured before January 1, 1976.

Paragraph (c) (6) is being revised to remove the words "filled and shipped" since they are unnecessary to establish the Department's jurisdiction. The words "Meets DOT requirements" are being substituted for the words "This extinguisher meets all requirements of 49 CFR 173.306(c)" to simplify the marking requirements. Added is a sentence explaining the meaning of the revised marking when it is placed on a fire extinguisher by its manufacturer. Added also is a requirement that the year of original test be displayed on each fire extinguisher. This marking will establish whether an extinguisher was manu-

factured in accordance with the existing regulations or the amended regulations. For this reason, the Board has decided to grant an extension of the effective date of the burst pressure requirement to January 1, 1976 rather than the full year requested by the petitioners. A note is being added to permit continued use of the markings prescribed in the original amendment until January 1, 1976.

In consideration of the foregoing, a portion of Amendment No. 173-81 in Docket No. HM-106 is revised as follows:

In § 173.306, paragraphs (c) (4) and (c) (6) are revised and a note is added following paragraph (c) (6) to read as follows:

§ 173.306 Exemptions from compliance with regulations for shipping compressed gas.

* * *

(c) * * *

(4) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 70° F. when shipped.

* * *

(6) Each fire extinguisher must be marked to indicate the year of its original test and "MEETS DOT REQUIREMENTS." This marking will be considered a certification that the fire extinguisher was manufactured in accordance with the requirements of this section.

NOTE: The words "This extinguisher meets all requirements of 49 CFR 173.306(c)" may be displayed in place of "MEETS DOT REQUIREMENTS" on extinguishers manufactured prior to January 1, 1976.

Amendment 173-81 in Docket No. HM-106, including the revisions contained herein, is effective on January 31, 1975. However immediate compliance is authorized.

AUTHORITY: Transportation of Explosives Act (18 U.S.C. 831-835) section 6 of the Department of Transportation Act (49 U.S.C. 1655) Title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472 (h), and 1655(c)).

Issued in Washington, D.C. on December 20, 1974.

C. R. MELUGIN, Jr.,
Board Member, for the Federal
Aviation Administration.

ROBERT A. KAYE,
Board Member, for the Federal
Highway Administration.

MAC. E. ROGERS,
Board Member, for the Federal
Railroad Administration.

W. M. BENKERT,
Board Member, for the United
States Coast Guard.

[FR Doc.74-30288 Filed 12-27-74;8:45 am]

[Docket No. HM-121; Amdt. 178-36]

PART 178—SHIPPING CONTAINER SPECIFICATIONS

I-Bars on Steel Drums

On October 11, 1974, the Hazardous Materials Regulations Board published a

notice of proposed rulemaking, Docket No. HM-121; Notice No. 74-12 (39 FR 36596), which proposed numerous miscellaneous amendments. Comments on one group of proposed changes concerning I-bars on steel drums were requested by November 12, 1974. Comments on all other proposed changes were requested by January 21, 1975. These amendments concern only those proposed changes to the regulations concerning the size of I-bars on steel drums. Two comments were received. Both comments agreed with the proposals and urged their adoption.

In consideration of the foregoing, 49 CFR Part 178 is amended as follows:

§§ 178.81-7, 178.83-7, 178.84-7, 178.87-7, 178.88-6, 178.90-6, 178.91-7, 178.97-5, 178.98-5, and 178.99-5 [Amended]

(A) In the following sections under the columns entitled "Rolling hoops" and "Size (gauge or inch)," the dimension "1 1/2" is revised to read "3/4 x 1 1/4," wherever it appears:

§ 178.107-6 [Amended]

(B) In § 178.107-6(a), in the third column of the table, the dimension "1 x 1 1/2" is revised to read "3/4 x 1 1/4."

§ 178.108-6 [Amended]

(C) In § 178.108-6(a), in the fourth column of the table, the dimension "1 x 1 1/2" is revised to read "3/4 x 1 1/4."

§ 178.109-6 [Amended]

(D) In § 178.109-6(a), in the third column of the table, the dimension "1 x 1 1/2" is revised to read "3/4 x 1 1/4."

This Amendment is effective March 31, 1975. However, immediate compliance with the regulations, as amended herein, is authorized.

(Transportation of Explosives Act (18 U.S.C. 831-835); sec. 6, Department of Transportation Act (49 U.S.C. 1655); Title VI; sec. 902 (h), Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472(h), and 1655(c)).)

Issued in Washington, D.C. on December 23, 1974.

R. P. SKULLY,
Board member,
Federal Aviation Administration.

KENNETH L. PIERSON,
Alternate Board Member,
Federal Highway Administration.

MAC E. ROGERS,
Board Member,
Federal Railroad Administration.

W. M. BENKERT,
Rear Admiral,
Board Member, Coast Guard.

[FR Doc. 74-30368 Filed 12-27-74; 8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE

Miscellaneous Amendments

By notice of proposed rulemaking published in the FEDERAL REGISTER on

April 1, 1974 (39 FR 11903-11904), notice was given to amend the Code of Federal Regulations, Title 50, Part 17—*Endangered Wildlife*, by adding three species of kangaroo—Red (*Megaleia rufa*), Eastern Gray (*Macropus giganteus*), and Western Gray (*Macropus fuliginosus*)—to the list of endangered fauna, pursuant to the authority contained in the Endangered Species Act of 1973 (87 Stat. 884).

During the ensuing 60-day comment period and since then, the U.S. Fish and Wildlife Service continued to seek and to examine additional information concerning the status of the three species of kangaroo in question. Interested persons were invited to submit written comments, suggestions, support data, views, or arguments concerning this proposed amendment to the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240, prior to June 4, 1974. Two biologists of the U.S. Fish and Wildlife Service spent five weeks in Australia gathering information and data from Federal and State officials there, and from graziers, private businessmen, and conservationists. The office of Endangered Species (U.S. Fish and Wildlife Service) has had the task of reviewing and evaluating all the information obtained during the interim period. Other priorities have delayed the final decision and publication of this rulemaking, but the delay in no way has affected the status of the three kangaroo, because the Australian government has continued to maintain a strict ban on the exportation of these animals. The most stringent prohibition that the United States could invoke would be to ban their importation into this country.

A thorough review of all information obtained relative to the status of the three kangaroo species in question (Red, Eastern Gray, and Western Gray), and to the threats on their continued existence, indicates that none presently can be considered in danger of extinction. Hence, none qualifies for classification as "Endangered" within the meaning of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543). Section 4(a) of that act includes the following statement:

The Secretary shall by regulation determine whether any species is an endangered species or threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence.

Evidence on hand at the time of the proposed rulemaking (April 1, 1974) suggested that Factors (1), (2), (4), and (5) were pertinent, and the discussion outlined some specific problems. In light of the more detailed knowledge now available, a further discussion is desirable to qualify the statements made at that time with regard to each of the four factors.

FACTOR (1) PRESENT OF THREATENED DESTRUCTION, MODIFICATION, OR CURTAILMENT OF HABITAT OR RANGE

The three problems identified in the proposed rulemaking for loss of kangaroo habitat in Australia are indeed present and are cause for concern. However, these losses, while substantial in total acreage, are small relative to the total kangaroo habitat and range. Greatest concern for habitat loss is evident for the Western Gray (*Macropus fuliginosus*) due to ever increasing expansion of agricultural interests in Western Australia. Although this loss poses a threat to the species and may result in its endangerment, it does not imply extinction within the foreseeable future. The various State governments are well aware of the habitat destruction and change that is taking place in parts of Australia and are taking steps to control the degradation occurring.

FACTOR (2) OVERUTILIZATION FOR COMMERCIAL, SPORTING, SCIENTIFIC, OR EDUCATIONAL PURPOSES

Once again the statements made in the proposed rulemaking are valid ones, yet there is no evidence to suggest "overutilization" on a species population basis nationwide. The combined effects of drought and commercial harvest reduced kangaroo populations to low levels in some regions during the late 1960's, but the wet conditions prevailing during the past three years have benefited the kangaroo. The animal is considered a pest by many graziers.

A few would prefer not having any kangaroo on their stations, yet most recognize the animal as a part of their country's heritage and have no desire to cause the animal's extinction. There seems to be an ever increasing number of graziers prohibiting all but controlled hunting of kangaroo on their properties. All States now have established quotas on the annual harvest of kangaroo (Queensland is about to do so). Western Australia intends to remove the Red Kangaroo from its "vermin" classification. The trend throughout Australia is for better regulation of kangaroo harvests. Nevertheless, species such as kangaroo, which have high commercial value and which have been and are being exploited heavily, must be regarded as species that are apt to become endangered unless adequate controls exist. Such species should be considered "Threatened" species as defined by the Endangered Species Act of 1973.

FACTOR (4) INADEQUACY OF EXISTING REGULATORY MECHANISMS

There remain many deficiencies in the gathering of population data that would be desirable for the setting of better control regulations, as is the case with many of the exploited animals throughout the world. The difficulties and expense of gathering such data, however, are well known to biologists and wildlife managers, and no management agency can do more than its best under existing restrictions on money and personnel to gather the information needed. All of the States have the necessary regulatory

power to adequately control the harvest of kangaroo; all have competent resource managers and biologists who are attempting to obtain the data needed for proper management; and none wishes to see any of the kangaroo exterminated. Regulations and management policy concerning kangaroo are not uniform between the States; many of the differences simply reflect different attitudes and environmental conditions; nevertheless, nationwide coordination is necessary. The current lack of coordination will not result in the extinction of the species within the foreseeable future, but does pose a threat that could lead to endangerment if not corrected.

FACTOR (5) OTHER NATURAL OR MAN-MADE FACTORS AFFECTING ITS CONTINUED EXISTENCE

All five problems mentioned in the proposed rulemaking exist, yet not to the extent of causing the three kangaroo to become extinct within the foreseeable future. There are valid indications that the kangaroo-hide industry will expand in future years, given the opportunity. Such commercial exploitation need not be detrimental, provided adequate controls exist; there is reason to believe that Australia is developing such controls. Preserves for sustaining kangaroo populations are lacking in number, but additional ones are being gazetted each year. Also, while not specifically classed as "preserves," there is substantial acreage in each State where hunting is prohibited or strictly controlled. Admittedly, law enforcement efforts are difficult because of funding and staffing lacks; and this problem, if uncorrected, poses a threat to the kangaroo that might lead to their endangerment.

Supporting evidence for the above statements is on file with the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. Interested persons are invited to examine and discuss this information at the Office if they desire.

It is hereby determined that the three kangaroo in question are not "Endangered" at present, within the meaning of the Endangered Species Act of 1973. Because of the heavy commercial exploitation and harvest of these kangaroo, however, in conjunction with potentially inadequate export controls, difficult enforcement problems, and the expressed concern of the Australian government, there is ample justification for classifying the three animals as "Threatened." Additionally, all of the factors discussed earlier are pertinent and in consort do represent "threats" to the maintenance of these species as viable components of their ecosystems. Current efforts by the Federal government in Australia and by each of the State governments there, however, emphasize the desire to assure adequate protection for the three kangaroo in future years. In view of the expressed concern of the Australian government regarding kangaroo management and harvest in that country, as reflected by its total ban at present on kangaroo exports and its intent to add

the three species in question to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Secretary of the Interior supports the Australian government in its present stand.

Accordingly, it is hereby determined that the Red (*Megaleia rufa*), Eastern Gray (*Macropus giganteus*), and Western Gray (*Macropus fuliginosus*) kangaroo are "Threatened" species. The following regulations are deemed necessary and advisable for the protection of these species.

The regulations in Part 17, Title 50, Code of Federal Regulations, presently are being revised. A proposed rulemaking will be retitled "Endangered and Threatened Wildlife" and the designation of threatened species and the promulgation of rules applying to such species will be placed in a new "Subpart D."

Accordingly, Part 17 of Title 50, Code of Federal Regulations, Chapter I, is amended as set forth below:

Effective: January 29, 1975.

Dated: December 16, 1974.

LYNN A. GREENWALT,
Director,
U.S. Fish and Wildlife Service.

1. Part 17 of subchapter B of 50 CFR, Chapter I, is retitled as set forth above.
2. In the Table of sections, a new subpart D consisting of §§ 17.31 and 17.32 are added to read:

Subpart D—Threatened Wildlife
Sec. 17.31 General.
17.32 Threatened wildlife list.

3. Sections 17.31 and 17.32 read as follows:

§ 17.31 General.

(a) This subpart contains the list of species determined to be "threatened" pursuant to section 4 of the Endangered Species Act of 1973.

(b) The prohibitions which apply to each listed species or related group of species are shown immediately below the entry to which they apply.

(c) In the "Threatened Wildlife" list of § 17.32, the "Scientific Name" constitutes the official identification of the species. The "Common Name" identifies the species by the English language names currently in common usage. Common names can vary greatly in local usage, and therefore they are provided for convenience only, but do not provide official identification of the species.

(d) In the "Threatened Wildlife" list of § 17.32, the column "Portion of range where threatened" designates the geographic area within which the species in question actually is determined to be threatened. The identified prohibitions apply only to wildlife of that species which live or occur in the designated geographic area, or which originated there. The "Range" column is shown for reference only, and indicates the present general distribution of the species. Example:

Common name	Scientific name	Range	Portion of range where threatened
XYZ Parrot	<i>Xyzus xyzus</i>	South America	Colombia.

This means that although the XYZ parrot occurs throughout South America, it has been determined to be threatened only in Colombia. Elsewhere in its range the parrot might be listed as endangered or perhaps not be listed at all. In the latter case, the prohibitions would apply only to XYZ birds occurring or originating in Colombia.

(e) The listing of a particular taxonomic group includes all lower taxonomic groups. Example:

(1) If the genus *Felis* was listed, all species, subspecies, races, and populations of that genus are considered to be listed.

(2) If the species *Felis concolor* was listed, all subspecies, races, and populations of that species are considered to be listed.

§ 17.32 Threatened Wildlife List.

Common name	Scientific name	Range	Portion of range where threatened
(a) Mammals:			
(1) Red Kangaroo.	<i>Megaleia rufa</i> .	Australia.	Entire range.
(2) Eastern Gray Kangaroo.	<i>Macropus giganteus</i> .	do.	Do.
(3) Western Gray Kangaroo.	<i>Macropus fuliginosus</i> .	do.	Do.

(i) **Prohibitions.** These prohibitions apply to the *Megaleia rufa*, *Macropus giganteus*, and *Macropus fuliginosus* listed above.

(A) Except as permitted by the Director pursuant to paragraph (a) (3) (i) or (ii), of this section, it shall be unlawful to import for commercial purposes any such wildlife.

(B) It shall be unlawful, in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife imported unlawfully.

(C) It shall be unlawful to sell or offer for sale in interstate or foreign commerce any such wildlife imported unlawfully.

(D) Upon receiving from the Australian Government a certificate that (1) a particular Australian State has developed an effective sustained-yield program for such wildlife, and (2) the taking of such wildlife in that State will not be detrimental to the survival of the species or subspecies of which such wildlife is a part, the Director may, consistent with the purposes of the act, permit by publication of a notice in the FEDERAL REGISTER the commercial importation of any such wildlife originating from that State, upon proof that such wildlife is lawfully taken and exported from that State: *Provided*, That if the Director determines from all the evidence that a previously certified Australian State no longer maintains an effective sustained-yield program for such wildlife, he may

by regulation prohibit any further commercial importation of such wildlife from that State.

(ii) *Exceptions.* This exception applies to the *Megaleia ruta*, *Macropus giganteus*, and *Macropus fuliginosus*, listed above.

(A) The Director may grant permits for the importation of such wildlife to prevent economic hardship. The provisions of § 17.22 (with the exception of §§ 17.22(c) (3), 17.22(c) (4), 17.22(c) (5), and 17.22(d)), shall apply to the issuance of such permits. In addition, the requirements of section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) regarding hardship exemptions for endangered species shall apply to applications for hardship exemptions under this section as if such wildlife were classified "endangered;" and the applicant for an exemption under this section must submit all information required by section 10(b).

(B) The tenure of any economic hardship permit issued for such wildlife under this provision will be limited by section 10(b) of the Endangered Species Act of 1973 as if those species were listed as "endangered" under the act.

[FR Doc.74-30369 Filed 12-27-74; 8:45 am]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Citrus Blackfly Regulated Area

This document amends the supplemental regulation which sets forth the regulated area for purposes of the Federal Citrus Blackfly Quarantine by adding to the suppressive regulated area all of Hidalgo County, Texas, and by designating as generally infested a part of Cameron County, Texas, which was previously designated as suppressive.

Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), and § 301.86-2 of the Citrus Blackfly Quarantine regulations (7 CFR 301.86-2), a supplemental regulation designating the regulated area is hereby amended to read in 7 CFR 301.86-2a as follows:

§ 301.86-2a Regulated area; suppressive and generally infested areas.

(a) The civil divisions and parts of civil divisions described below are designated as citrus blackfly regulated areas within the meaning of the provisions of this subpart and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

(1) *Generally infested area—Cameron County.* That portion of Cameron County bounded by a line beginning at a point on the Rio Grande River directly south of the junction of Farm to Market Road 802 and U.S. Highway 281; thence due north along an imaginary line from said point on the Rio

Grande River to the point of juncture of Farm to Market Road 802 and U.S. Highway 281; thence northerly and easterly along Farm to Market Road 802 to its junction with Farm to Market Road 511; thence southerly along said road to its junction with Farm to Market Road 3068; thence southerly along said road to its junction with Farm to Market Road 1419; thence directly south along an imaginary line from said junction to the Rio Grande River; thence northwesterly along said river to the point of beginning.

(2) *Suppressive area—Cameron County.* The entire County except the portion designated generally infested.

Hidalgo County. The entire county.

(Secs. 8 and 9, 37 Stat. 318, as amended; sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee); 37 FR 28464, 28477, as amended; 38 FR 19140, 7 CFR 301.86-2, 39 FR 9653)

The Deputy Administrator of the Plant Protection and Quarantine Programs has determined that the citrus blackfly has been found or there is reason to believe it is present in the civil divisions and parts of civil divisions listed as regulated areas, or that it is necessary to regulate such areas because of their proximity to citrus blackfly infestation or their inseparability for quarantine enforcement purposes from citrus blackfly infested localities. Further, he has determined that the areas designated as suppressive and generally infested areas are eligible for such designation under § 301.86-1.

The Deputy Administrator has also determined that the quarantined State, wherein only portions of the State are designated as regulated areas, has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the quarantine and regulations in this subpart and that the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the citrus blackfly. Therefore, the civil divisions and parts of civil divisions listed above are designated as citrus blackfly regulated areas.

This document imposes restrictions that are necessary in order to prevent the dissemination of the citrus blackfly and should be made effective promptly to accomplish its purpose in the public interest. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing amendment are impracticable and unnecessary and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

This amendment shall become effective December 30, 1974.

Done at Washington, D.C., this 24th day of December, 1974.

LEO G. K. IVERSON,
Deputy Administrator, Plant
Protection and Quarantine
Programs.

[FR Doc.74-30355 Filed 12-27-74; 8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.1]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

REVISION OF SUBPART

Subpart A of Part 1822 of Title 7, Code of Federal Regulations (35 FR 14901; 38 FR 4383; 38 FR 7123; 38 FR 30998; 39 FR 14714) is revised to expedite and further improve the operation and administration of the section 502 Rural Housing Loan Program. This revision makes the following changes and additions:

(1) Subpart M of this Part, "sections 502 and 504 Rural Housing Loans on Leasehold Interests on Nonfarm Tracts," is incorporated in the revised procedure.

(2) Part 1890 n of this Chapter, "Servicing of Interest Credits for section 502 RH Borrowers," and the existing special notices and FmHA Bulletins concerning the granting and servicing of interest credits for section 502 RH loans are incorporated as Exhibit E of this Subpart.

(3) The provisions of Part 1890 f of this Chapter, "Farmers Home Administration Loans to Indians Secured by Trust or Restricted Land," is incorporated in this revised Subpart.

(4) Section 1822.2 is revised to remove that portion which allows Section 502 RH loans to finance farm service buildings.

(5) Section 1822.3(c) is revised to define "rural area" in accordance with the provisions of the Housing and Community Development Act of 1974.

(6) Section 1822.3(n) is revised to liberalize the types of deductions that may be made in determining a family's eligibility for a Rural Housing (RH) loan.

(7) Section 1822.7(c) is revised to provide for the refinancing of debts as authorized by the Housing and Community Development Act of 1974.

(8) Section 1822.7(1) is revised to clarify that group service participation loans are made only to finance a domestic water or waste disposal system which is related to the borrower's dwelling.

(9) Section 1822.7(o), added by 39 FR 14714 dated April 26, 1974, is now contained in Exhibit E of this Subpart.

(10) Section 1822.9(c) is revised to provide that an appraisal of the security property will be made when a mortgage will be taken on real estate securing a loan of \$5,000 or more.

(11) Section 1822.10 is revised to permit, in certain cases, loans of \$2,500 or less scheduled for repayment in not more than 10 years from the date of the note to be made on the basis of a promissory note only and loans of not more than \$5,000 scheduled for repayment in not more than 15 years from the date of the note to be secured by the best real estate mortgage obtainable on the property.

(12) Section 1822.11(b) is revised to clarify the conditions under which the county committee may be used to determine the eligibility of an RH applicant in accordance with the provisions of the Housing and Community Development Act of 1974.

(13) Section 1822.15(a) is revised to authorize the closing of an RH loan, under certain conditions, based on the applicant's circumstances at the time of loan approval.

(14) Section 1822.16 is revised to clarify the types of circumstances under which Rural Housing Disaster (RHD) loans may be made and to provide for an interest rate of 5 percent.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553(a)(2) with respect to such rules. See the Secretary of Agriculture's statement setting forth the policy on public participation in rule-making 36 FR 13804, dated July 24, 1971. These regulations, however, are not published for proposed rulemaking because certain of the changes implement provisions of the Housing and Community Development Act of 1974, and for that reason publication for comments is unnecessary, as in the case with other changes which affect only internal agency procedure and clarify existing regulations. Other changes made will enable the agency to expedite needed benefits of the Act to the public and to delay issuance of such regulations by publishing for public comment would be contrary to the public interest. In accordance with the spirit of the Secretary's policy, interested persons may submit written comments, suggestions, data or arguments to the Office of the Deputy Administrator Comptroller, Farmers Home Administration, United States Department of Agriculture, Room 5007, South Building, Washington, D.C. 20250, on or before January 29, 1975. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. However, this Subpart A of Part 1822 shall remain effective until it is amended in order to permit the public business to proceed expeditiously. Subpart A, as revised, will read as follows:

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

Sec.	
1822.1	General.
1822.2	Objectives.
1822.3	Definitions.
1822.4	Eligibility requirements.
1822.5	Veterans' preference.
1822.6	Loan purposes.
1822.7	Special requirements.
1822.8	Source of funds and rates and terms.
1822.9	Technical service.
1822.10	Security.
1822.11	Processing applications and county committee certification.
1822.12	Preparation of loan docket.
1822.13	Loan approval.
1822.14	Actions subsequent to loan approval.
1822.15	Loan closing actions.
1822.16	Rural housing disaster loans.
1822.17	Subsequent section 502 loans.

Sec.	
1822.18	Reamortization of existing FmHA debt(s).
Exhibit A—	Mutual Self-Help Housing Guidelines. (Available at any FmHA office)
Exhibit B—	Information Required to Package Applications for Section 502 Rural Housing Loans.
Exhibit C—	Maximum Adjusted Income for Low-Income Families.
Exhibit D—	Maximum Adjusted Income for Moderate-Income Families.
Exhibit E—	Interest Credits.
Exhibit E-1—	(Internal Agency Procedure.)
Exhibit E-2—	Interest Credit Agreement Renewal.

AUTHORITY: 42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1822.1 General.

This subpart sets forth the policies and procedures, and delegates authority, for making section 502 Rural Housing (RH) loans to individuals under Title V of the Housing Act of 1949, as amended.

§ 1822.2 Objectives.

The basic objective of the Farmers Home Administration (FmHA) in making section 502 loans is to assist farm-owners and other persons who will live in rural areas to obtain decent, safe, and sanitary dwellings and related facilities. The purpose of these loans is to give families, who do not have sufficient resources to provide such dwellings and related facilities on their own account and cannot obtain the necessary credit from other sources on terms and conditions they reasonably can be expected to meet, an opportunity to have adequate homes.

§ 1822.3 Definitions.

For the purposes of this Subpart, the following definitions will apply:

(a) **Farm.** A "farm" includes the total acreage of one or more tracts of land which is owned by the applicant; is operated as a single unit; is in agricultural production; and annually will produce agricultural commodities for sale and home use with a gross value of at least \$400 based on 1944 prices. To aid in estimating the gross annual value of agricultural commodities produced on a particular farm, each state will issue a list of the 1944 prices for the principal farm commodities in the state.

(b) **Nonfarm tract.** A "nonfarm tract" is a parcel of land that is not a farm and is located in a rural area. A building site that is part of a farm as defined in paragraph (a) of this section, and which secures an RH loan in accordance with § 1822.10(b)(6), will be considered a nonfarm tract.

(c) **Rural area.** (1) Any place which is not part of or associated with a non-rural area, is rural in character, and has a population not in excess of 10,000, or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a Standard Metropolitan Statistical Area (SMSA), and has a se-

rious lack of mortgage credit, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Population count will be based on the latest official figures.

(2) Open country, including sparsely populated areas, which are not part of or associated with a nonrural area and are strictly rural in character.

(3) In determining whether a place or open country is part of or associated with a nonrural area, the following intervening factors will be disregarded.

(i) Minor open spaces due to physical barriers.

(ii) Commercial or industrial developments.

(iii) Public parks and similar open spaces.

(iv) Areas reserved for recreational purposes.

(v) Intervening tracts suitable for development.

(4) The State Director, through appropriate State regulations, shall identify by list and maps the places and open country that are "rural areas" for the purposes of this Subpart, *Provided, however*, That no list or map of places in excess of 10,000 but not in excess of 20,000 that are to be characterized as "rural areas" will be identified in said State regulation without the prior authorization of the National Office.

(d) **Place.** A "place" consists of all the land lying within the official boundaries of any village, town, or city plus all the land lying within any densely settled incorporated or unincorporated areas near or associated with it. "Town" means a municipality similar to a city but not a New England-type town which resembles a township or county in most states.

(e) **Owner.** An "owner" includes the following in addition to the owner of full marketable title:

(1) A lessee of a farm or nonfarm tract which meets the requirements of § 1822.7 (j) or (k).

(2) The owner of an undivided interest in land who is otherwise eligible.

(3) The purchaser of land under a purchase contract which obligates him to pay the purchase price, gives him the rights of present possession, control and beneficial use of the property, and entitles him to a deed upon paying all or a specific part of the purchase price.

(4) The holder of a life estate having the usual rights of present possession, control and beneficial use of the property. A remainderman is not an owner, but will be required to join in executing the mortgage, where a mortgage is required as security, and may be required to sign the note if necessary for a sound loan.

(5) Indians owning land in a trust or restricted status as described in § 1822.7 (o).

(f) **Mortgage.** A "mortgage" includes any form of security interest or lien upon any rights or interest in property of any kind.

(g) **Security.** "Security" includes any rights or interests in property of any kind subject to a mortgage.

(h) **Real estate.** "Real estate" includes the rights and interests of an

owner, as defined in paragraph (e) of this section, in a farm or nonfarm tract.

(i) *Existing dwelling.* An "existing dwelling" is one which is more than 1 year old or previously occupied as a residence.

(j) *Minimum adequate site.* A "minimum adequate site" is the smallest area sufficient for the dwelling and related facilities to be built, purchased, or refinanced; and a yard.

(1) In case of purchase of a site on which to construct a dwelling or purchase of a new dwelling and site, the site should be not more than one acre of nonincome-producing land, unless more than one acre is needed to comply with local code requirements or to provide for a safe and adequate water supply or waste disposal system.

(2) In case an existing dwelling and site is being purchased or debts are being refinanced, the site may, under the following conditions, include more than one acre but not more than a few acres of nonincome-producing land:

(i) In a case where an existing dwelling is being purchased, the seller will sell the dwelling only with the entire site on which it is located and the cost of extra land is not a substantial portion of the loan.

(ii) In a refinancing case, the extra land cannot be sold for a significant amount.

(3) In all cases, the buying of a site of more than one acre must be fully justified and the reasons recorded in the loan docket.

(k) *Senior citizen.* A "senior citizen" is a person who is 62 years of age or older and either is a citizen of the United States or resides in the United States after being legally admitted for permanent residence.

(l) *Cosigner.* A "cosigner" is a party who joins in the execution of a promissory note to guarantee its repayment by the borrower. The cosigner becomes jointly and severally liable to comply with the terms of the note in the event of the borrower's default.

(m) *Leasehold acquisition cost.* The cost of acquiring a leasehold interest on a nonfarm tract exclusive of any monthly or annual rental charges.

(n) *Current annual family income.* This consists of net farm and nonfarm business income plus all recurring dependably available income from salary, wages, pensions, social security, welfare payments, or other sources received by the husband and wife, and any other members of the family who have reached the legal age of majority in the State and reside in the home. Welfare, social security, child support payments, and other payments made on behalf of minors will be included as current family income. It does not, however, include non-recurring income not normally received every year, such as gifts, unusual pay, pay earned from clearly temporary employment, payments received for the care of foster children, income received from GI Bill, fellowships, scholarships, et cetera, for schooling or earnings from employment of a full-time student when

other than the applicant and spouse, proceeds from the sale of equipment, mineral rights, timber, or real estate not sold under a long-term contract, cash value of food stamps or similar types of income. In determining current annual family income, the following deductions may be made:

(1) *Depreciation of income-producing property.* A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the applicant's trade, business, or farming operation. The applicant must provide an itemized schedule showing the depreciation claimed, and this schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

(2) *Employee business expenses.* A deduction may be made in the same manner as outlined in IRS regulations for necessary business expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and in the judgment of the approving officials, should be deducted from an employee's income to reflect current annual family income on an equal basis with other employed persons. Deductions are not permitted for the following:

(i) Transportation to and from work;

(ii) Cost of meals incurred on one-day business trips;

(iii) Educational expenses incurred to meet minimum requirements of a profession or to qualify for a new profession, trade, or business; or

(iv) Fines and penalties for violation of laws.

(3) *Child care, disabled dependent care, or incapacitated husband or wife care.* Income deductions may be made for expenditures actually paid to enable the husband or wife to be gainfully employed. The basis for any deduction must be recorded in detail in the applicant's loan docket. The deductions are authorized only if all of the following conditions are met:

(i) For dependent children under the age of 15 cared for outside the home, the maximum deduction will not exceed the following each month:

(A) One child \$200;

(B) Two children \$300;

(C) Three or more children \$400.

(ii) Expenses for child care services performed in the home are not limited to the above, but are subject to the \$400 maximum deduction each month.

(iii) A deduction not to exceed \$400 each month, for incapacitated husband or wife care, or disabled dependents age 15 or over who are incapable of self care is authorized only when service is performed in the home.

(iv) In no case will the aggregate of all deductions for child care, disabled dependent care, or incapacitated husband or wife care exceed \$400 per month.

(v) Payments for these services must have been to other than close relatives or dependent members of the applicant's household. Close relatives include: son

or daughter and their descendants; stepson or stepdaughter; brother or sister; stepbrother or stepsister; father or mother and their ancestors; stepfather or stepmother; nephew or niece; uncle or aunt; son-in-law or daughter-in-law; father-in-law or mother-in-law; and brother-in-law or sister-in-law.

(o) *Adjusted annual family income.* This is a family income as defined in § 1822.3(n) less 5 percent thereof, and less \$300 for each minor person, as defined by State law, excluding the husband and wife, who is a member of the immediate family and lives in the home. The immediate family includes those persons related to the applicant by blood marriage, or operation of law, such as adoption or legal guardianship.

(p) *Low income.* This is an adjusted annual family income that does not exceed the maximum limit for low-income families for the State as provided in Exhibit C of this Subpart.

(q) *Moderate income.* This is an adjusted annual family income that does not exceed the maximum limit for moderate-income families for the State as provided in Exhibit D of this Subpart.

(r) *Above-moderate income.* This is an adjusted family income that exceeds the income limits to qualify as a moderate-income applicant.

(s) *Rehabilitation.* This means major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes which are financed with RH loan funds or performed by the seller immediately prior to offering the dwelling for sale.

§ 1822.4 Eligibility requirements.

To be eligible for a Section 502 loan, the applicant must meet all of the following requirements:

(a) Be one of the following:

(1) A person who does not own an adequate dwelling and who will become the owner and will permanently occupy the dwelling in a rural area after the loan is closed.

(2) A farmowner without decent, safe, and sanitary housing for his own use or for the use of his tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide on his own account the necessary housing, or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which he reasonably could be expected to fulfill. If the applicant has only an undivided interest in the land to be improved, the applicant and co-owners, other than those whose execution of the mortgage is not required in accordance with § 1822.7(d)(5) or § 1822.10(b)(4) must, individually and jointly, be unable to provide the improvements with their own resources or obtain the necessary credit elsewhere.

(c) Be a natural person (individual) who is a citizen of the United States or resides in the United States after being legally admitted for permanent residence.

(d) Have adequate and dependably available income to meet family living expenses, pay taxes, insurance, and maintenance cost, and repayment on debts including the proposed loan. However, an applicant whose income is not sufficient to fully meet the loan payments may obtain as a cosigner(s), a person(s) or corporation(s), with income which, when added to the applicant's income, will be sufficient to repay the loan.

(e) Possess the ability necessary to carry out the undertaking and obligations required in connection with the loan.

(f) Possess legal capacity to incur the obligations of the loan.

(g) Be a low- or moderate-income family with an adjusted family income that does not exceed the maximum limit for low- or moderate-income families, as appropriate, for the State as provided in Exhibits C and D of this Subpart, unless exceptions are authorized by the State Director in accordance with § 1822.15(a), or by the National Office.

§ 1822.5 Veterans' preference.

Applications received from veterans and from spouses and children of deceased servicemen, as defined in § 1801.6 of this Chapter, will be given preference.

§ 1822.6 Loan purposes.

(a) A loan may be made to any eligible applicant to:

(1) Buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities to be used as his permanent residence on his farm or on a nonfarm tract he owns or will own after the loan is closed.

(2) Purchase and move to such farm or nonfarm tract an existing dwelling to be used as his permanent residence.

(3) Purchase or install essential equipment which upon installation becomes part of the real estate.

(4) Purchase and install in the dwelling a range, refrigerator, clothes washer, or clothes dryer when the loan is being made primarily for other purposes, and provided these items are normally sold with the dwellings in the area. Approved space heaters also may be purchased with loan funds.

(5) Provide fallout shelters, storm cellars and similar protective structures.

(6) Provide an adequate and safe water supply for the applicant and his family.

(7) Provide an adequate sewage disposal facility for the applicant and his family.

(8) Buy for his own use an existing dwelling on a minimum adequate site.

(9) Buy a minimum adequate site on which to place a dwelling for his own use provided he does not already own an adequate site.

(10) Pay reasonable acquisition cost for a leasehold interest in a nonfarm tract at the time of making the initial RH loan in areas where lease acquisition is customary.

(11) Purchase, in fee title, a minimum adequate site on which an RH loan was

or is being made on a leasehold interest in a nonfarm tract.

(12) Provide site preparation, foundation plantings, seeding or sodding of lawns and other facilities related to dwellings, such as walks, yard fences and driveways, to building sites located adjacent to a road or street.

(13) For initial loans, pay real estate taxes that are due and payable at the time of loan closing on the buildings and building site to be given as security when a loan is being made primarily for other purposes and the amount to be used for taxes is not a substantial part of the loan.

(14) Pay expenses incident to obtaining plans and making the loan, such as fees for credit reports, tax monitoring service, legal, architectural, surveying, and other technical services, and reasonable connection fees for utilities such as water, sewerage, electricity, or gas, which are required to be paid by the borrower and which he cannot pay from other funds. Loan funds also may be used to pay the borrower's share of social security taxes for labor hired by the borrower in connection with making planned improvements. Loan funds may not be used to pay fees, charges, or commissions, such as finders' fees, fees for packaging the application, or placement fees for the referral of prospective applicants to the FmHA.

(b) A loan may be made to a farmowner for the purposes specified in § 1822.6(a) and to buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities for use by the farmowner or his farm manager, tenant, sharecropper or farm laborers.

(c) Improvements financed with loan funds must be on land which, after the loan is closed, is part of a farm or nonfarm tract owned by the borrower or on an easement appurtenant to such farm or nonfarm tract.

(d) A loan may be made to the owner of a farm or nonfarm tract to refinance secured or unsecured debts, as provided in § 1822.7(c).

§ 1822.7 Special requirements.

(a) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart A of Part 1802 of this Chapter.

(b) *Building limitations.* (1) A dwelling financed for a family with a low or moderate income must be modest in size, design, and cost. Adequate housing ordinarily can be provided for such families within less than 1,300 square feet of living area. Living area does not include space such as a patio, carport, garage, porch not suitable for year-round use, unfinished basement, and, if the dwelling does not have a basement, space for utilities such as furnace and hot water heater; however, such space must be kept within reasonable limits and not expanded to circumvent the limitations of this paragraph. When

such an applicant has an unusually large family, a somewhat larger house may be justified to provide adequate sleeping space. Furthermore, particular design features or items should not be included in homes of families with low or moderate incomes if such features or items are customarily not included in other adequate but modest homes being built in the area by families with similar incomes. Items that are desirable but not necessary, such as extra baths and four bedrooms for small families, extravagant or costly bathroom fixtures and kitchen equipment, expensive kitchen cabinets, floor covering of short-term duration, et cetera, are not authorized. Furthermore, items such as 2-car garages or 2-car carports and fireplaces will be authorized only when justified for the individual family and then only on a case by case basis.

(2) Any buildings purchased with RH funds must be structurally sound, functionally adequate, and either be in good repair or placed in that condition with loan funds. Newly constructed dwellings must comply with the policies stated in paragraph (b)(1) of this section. Good judgment must be used in applying these policies to existing dwellings.

(3) Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. However, if a loan of not more than \$5,000, scheduled for repayment in not more than 15 years from the date of the note, is made to repair a dwelling which is owned by the applicant and occupied by him or his farm manager, tenant, sharecropper, or farm laborers, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completely finished interior in some rooms. Such dwellings, however, must meet the basic housing needs of the family and provide decent, safe and sanitary living conditions when the improvements financed with the loan are completed.

(c) *Refinancing debts.* (1) When an applicant's request includes the use of loan funds for refinancing debts, it must be determined before a loan is made that his present creditors will not give him rates and terms on the existing debts that he reasonably could be expected to meet. Before refinancing any debt, the County Supervisor will:

(i) Determine that the applicant is so seriously delinquent that he is likely to lose his necessary dwelling at an early date if the debt is not refinanced; or that the applicant will experience a financial hardship in repaying the existing debt(s) and the FmHA loan in cases where a loan is being made for improvement, rehabilitation, or repairs of the applicant's dwelling or related facilities.

(ii) Determine that the debts were incurred for purposes for which a section 502 RH loan could have been made, or are items covered by the mortgage to be refinanced, such as accrued interest, insurance premium or real estate tax advances and preliminary foreclosure costs.

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(iii) Discuss with the applicant the possibility of obtaining the needed credit from the applicant's present creditors or other sources. He will request the applicant to contact his present creditors to explain his credit needs and to determine if the creditor will renew, extend, change, or reduce the present debts as appropriate. He will also advise the applicant of other credit sources available in the area which might assist him with his credit needs and request that he contact such credit sources. If the applicant is unsuccessful in his efforts to obtain credit or to get a revision of the rates and terms of his indebtedness, the County Supervisor will obtain from the applicant the reason given by the present creditors and other sources for not assisting the applicant, and document such information in the running record.

(iv) After obtaining the information from the borrower, the County Supervisor should determine the necessity for refinancing. If the loan is to be processed, a statement of each debt showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, annual installment, amount of principal and interest delinquent, unpaid principal and accrued interest will be obtained. If all or any part of any debt is to be refinanced, the amount necessary to settle the account in full or to bring the account current will be ascertained. In any case in which the RH loan is to be secured by a junior mortgage, the County Supervisor will obtain early in the loan processing the first mortgagee's determination that he cannot furnish the applicant the additional credit that he needs.

(2) Debts secured by real estate liens will not be refinanced unless the liens are against the property on which a mortgage will be taken to secure the RH loan.

(3) Loans ordinarily will not be made to refinance long-term real estate loans guaranteed or insured by the Federal Housing Administration (FHA) or the Veterans Administration (VA) or of the type generally made by lenders such as the Federal Land Banks (FLB) or insurance companies. When it is necessary to refinance such debts, the total debt will not be refinanced if a part of the debt can be refinanced on a sound basis with the lender's agreement. In such a case, that part of the debt to be refinanced will not include more than existing delinquencies plus the next installment to become due that the borrower will be unable to pay.

(4) Debts incurred less than 5 years prior to the date of the application will not be refinanced.

(5) To develop a sound basis for a loan, a reduction of existing debts may be necessary.

(d) *Refinancing of RH loans.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at rates and terms for loans for similar purposes and periods of time prevailing in the area, the borrower will,

upon request, apply for and accept such refinancing. Graduation reviews for RH borrowers will be conducted in accordance with Part 1865 of this Chapter.

(e) *Loan limitations.* (1) An RH loan to buy or build a dwelling may be made up to the market value of the security less the unpaid balance plus past-due interest of any other liens against the property for:

(i) A new dwelling on which:

(A) A conditional commitment was issued in accordance with Subpart H of this Part; or

(B) The RH loan will be closed prior to the start of construction; or

(C) Construction is financed in accordance with § 1822.19; or

(D) The required construction inspections were made by the FHA or the VA and there is evidence that the dwelling has been completed in accordance with the approved plans and specifications. Evidence may consist of copies of the FHA or VA final inspection report showing no exceptions or a letter from the FHA or VA stating that the dwelling was built in accordance with approved plans and specifications.

(ii) An existing dwelling which is more than a year old.

(2) An RH loan will be limited to 90 percent of the market value of the security for any dwelling that does not meet the requirements of paragraph (e) (1) (i) or (ii) of this section.

(3) Ordinarily, a loan docket will not be developed or approved when a loan plus any other liens against the security would be in excess of the value of the security as recommended by the appraiser or 90 percent of such value, whichever is appropriate, except:

(i) In unusual cases, when the amount of a loan plus any other liens that will be against the security is slightly above its recommended value and the County Supervisor believes that the loan should be made, the completed loan docket will be submitted to the State Office for a determination as to whether it is justifiable to establish the market value of the security above the appraiser's recommended value. If the State Director determines that the market value is in excess of the appraiser's recommended value, he will record his determination of the market value of the security on Form FmHA 440-3, "Record of Actions," before approving the loan. This authority will not be redelegated below the State Office level.

(ii) When the market value is exceeded by all or part of a lien held by a public body, hospital or welfare institution for advances made for medical bills, welfare payments or state motor vehicle judgments, provided:

(A) The borrower is unable to settle or compromise such lien sufficiently to avoid exceeding the market value; and

(B) The lien securing the excess amount will at all times be inferior to the FmHA mortgage securing the initial loan and any subsequent loan or advances determined by the FmHA to be reasonably necessary to carry out the

purpose of the initial loan or to protect the Government's financial interest; and

(C) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan; and

(D) The borrower has the ability to meet any payments on the excess debt as they become due or are likely to become due.

(f) *Conditional commitments.* Conditional commitments shall be made in accordance with Subpart H of this Part.

(g) *Construction financing.* Builders or sellers will, in all cases possible, complete construction or repair of buildings before section 502 RH loans are closed. Assistance in obtaining construction financing may be provided in accordance with § 1822.19.

(h) *Liens junior to FmHA lien.* A loan will not be made if a lien junior to the RH mortgage likely will be taken simultaneously with or immediately subsequent to closing of the loan to secure any debts he may incur in connection with the RH loan purposes, such as debts for a portion of the purchase price of the land or for money borrowed from others for payments on debts against the property or for part of the construction cost, unless such a lien plus the RH loan and any prior lien will not interfere with the purposes of the loan or repayment thereof and either will be entirely within the market value of the security or will exceed such market value only by an amount which will meet the requirements of paragraph (e) (3) of this Section.

(i) *Restrictions on loans.* Loans will not be made to:

(1) A corporation or cooperative association.

(2) A homestead entryman or desert entryman to improve the entry prior to receipt of patent.

(3) Refinance except in accordance with paragraph (c) of this Section or to pay costs incurred prior to the closing of a loan except fees for credit reports, legal, architectural, and other technical services. The County Supervisor, not later than the time of planning improvements, will advise each applicant that a building site must not be purchased, construction work must not be started, materials must not be ordered nor delivered, and costs for such purposes must not be incurred before loan closing if loan funds are to be used to pay such costs. If, nevertheless, the applicant incurs costs for materials or construction or site acquisition before the loan is closed, the County Supervisor, or the Assistant County Supervisor in connection with loans within their respective approval authorizations, may authorize the use of RH funds to pay such costs only when, after documenting the facts, he finds that all of the following conditions exist: (In a questionable case, the County Supervisor will submit the complete facts to the State Director for advice before taking action.)

(i) The costs were incurred after the applicant filed a written application for a loan, except that in the case of a subsequent loan to complete improvements

previously planned, the costs were incurred after the initial loan was closed.

(ii) The applicant is unable to pay such costs from his own resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(iii) The construction or repair work conforms to that shown on the building plans and specifications or Form FmHA 424-1, "Development Plan," when applicable. The costs were incurred for authorized Section 502 loan purposes, and the total costs necessary for a sound loan can be paid from funds available.

(4) Buy income-producing land or income-producing buildings.

(5) An applicant whose debts have been settled pursuant to Part 1864 of this Chapter, or by release from personal liability under Subpart A of Part 1872 of this Chapter, as reflected by the county office records, or where settlement under Subpart A of Part 1872 or Part 1864 of this Chapter is contemplated, unless: The applicant's failure to pay his loan indebtedness was the result of circumstances beyond his control; the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been or will be removed by making the loan; and the applicant's operations will be sound and afford him a reasonable prospect for repaying the proposed loan and meeting his other obligations. Before approving the property or causing such an applicant to incur any expenses in connection with the loan, the County Supervisor, if he determines that the applicant should be considered for a loan, should complete Form FmHA 431-2, "Farm and Home Plan," or Form FmHA 431-3, "Family Budget," when applicable, and send it, together with the application, any available case folders, and his recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

(6) Purchase land upon which to construct a building, when the applicant already owns land suitable for the purpose.

(7) Refinance a portion of a prior lien in order to obtain the release of a building site from an existing mortgage unless the refinancing meets the requirements of paragraph (c) of this section.

(8) A family who will likely be unable to personally occupy the home on a permanent basis. To illustrate, military personnel on active duty and full-time students, because of the probability of their being transferred or moving to another location after graduation, will not be granted loans unless:

(i) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge; and

(ii) The family intends to make the home their permanent residence and

there are reasonable prospects that employment will be available in the area after graduation or discharge; and

(iii) Either the applicant or spouse will be available to make inspections if the home is being constructed and to sign checks for work performed.

(j) *Loans on leasehold interest in farms.* A loan secured by a mortgage upon a farm leasehold, if otherwise proper, may be made when the lessor owns the fee simple title marketable in fact and neither the leasehold nor the fee simple title is subject to a prior lien. If, in any case involving a prior lien, the County Supervisor concludes that a sound loan can be made upon a leasehold, he will submit complete information to the State Director for review and authorization prior to approval of the loan.

(1) The lease must contain provisions as are necessary to enable the lessee to achieve the purposes for which the loan was made, and the Government as holder of a mortgage on the lease or leasehold interest to obtain adequate security, service the loan, and enforce the security instruments as necessary to protect the Government's interest. This includes, besides the lessor's written consent to the RH mortgage, such matters as:

(i) Reasonable security of tenure. The borrower's interest will not be subject to summary forfeiture or cancellation. In fact, the lease must contain a provision or an agreement must be executed by the lessor and the lessee and made a part of the lease indicating that any renewal provided for in the lease will be automatic as long as there is an FmHA lien on the property, unless otherwise authorized by the FmHA.

(ii) The right to foreclose the RH mortgage and sell without restrictions that would adversely affect the salability of the security. Any effect on market value should be shown in the appraisal.

(iii) Right of FmHA to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(iv) The right of FmHA, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of a credit sale, the FmHA will take a vendor's mortgage with rights similar to those under the original RH mortgage.

(v) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(vi) Advance notice to FmHA of lessor's intention to cancel or terminate the lease. Such advance notice will be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest, and if litigation is involved, to refer the case with a report of the facts to the United States Attorney and permit him to take appropriate action.

(vii) Express provisions concerning the question of liability of FmHA for unpaid rentals or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) Any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(2) The lease must have an unexpired term, from the date of loan approval, of at least 50 years (a lease for 25 years with an option to the lessee to renew for an additional 25 years would be considered a 50-year lease), except where:

(i) A lease is granted for the purpose of permitting a family to obtain an RH loan and the time required to process and approve the loan results in the unexpired term of the lease being not less than 49 years; or

(ii) A lease is in existence at least 1 year prior to the date of loan approval. An RH loan may be made provided the unexpired term of the lease is at least 50 percent longer than the repayment period of the loan. In no case will the unexpired term of the lease be less than 15 years.

(3) In any State in which real estate or chattel mortgages may be taken on leasehold interest in farmland running for terms of 15 years or more and be recorded so as to protect the mortgagee, a State regulation will be issued in regard to making loans to holders of such interests.

(k) *Loans on leasehold interest in non-farm tracts.* Loans may be made on leaseholds on land owned by a State, political subdivision, public body, or public agency, on Indian tribal lands which are not available for purchase or on land where the State Director determines that long-term leasing of homesites by non-public bodies is a well established practice and such leaseholds are freely marketable in the area, provided:

(1) The applicant is unable to obtain fee title to the property.

(2) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security unless the loan is made on the basis of a Promissory Note only.

(3) The amount of the RH loan plus any prior liens against the property will not exceed the maximum security value determined in accordance with Part 1809 of this Chapter.

(4) The terms of the lease meet the requirements as outlined in paragraph (j) (1) and (2) of this section, and

(i) The rental charged for the lease should not exceed the rate being paid for similar leases.

(ii) The lease forms used by the FHA and the VA in the area, the Bureau of Indian Affairs (BIA) lease Form No. 5-184, "Lease," and the lease forms used in cases of RH loans on farm leaseholds, should be used by the State Director as guides in developing a lease. The services of the Office of the General Counsel (OGC) are available for this purpose.

The lease may include a provision permitting the lessor the option of paying the RH debt in full in case the borrower defaults.

(1) *Group service participation loans.* A loan to an eligible applicant in accordance with §§ 1822.4 and 1822.6 may include funds to enable him to furnish his part of the cost of constructing, remodeling, repairing or buying a domestic water system or waste disposal system which is related to his dwelling, provided the following conditions are met or unless exceptions are authorized by the National Office:

(1) The facility must be jointly owned and used by not more than 10 participants.

(2) The domestic water or waste disposal system cannot be provided with a Soil and Water (SW) association loan.

(3) The group must act as individuals and not as a legal entity such as a partnership, corporation or association.

(4) The facility will be located in a rural area and will be used for normal home use by families of the applicants.

(5) The applicant will give FmHA a mortgage as required in § 1822.10(b), including his interest in the property to be improved with the loan provided it is practical to mortgage the property. The interest of any co-owners of the jointly-owned facility who are not applicants may be excluded from the mortgage on prior approval by the State Director, as provided in § 1822.10(b)(4).

(6) The owners have written agreements as to the construction, use, maintenance, and repair of the facility and obtain necessary jointly-owned easements.

(7) The facility will not cost more than \$50,000 or have a depreciated replacement value that exceeds \$50,000 if such facility is being purchased, enlarged or improved.

(8) All funds to be used to finance construction or installation of the joint facility will be deposited in a supervised bank account.

(m) *Section 502 loans to Farm Ownership (FO), individual soil and water (SW) and recreation (RL) borrowers and applicants.* (1) A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and another lender, provided they meet the following conditions:

(i) RH loan funds are used only to buy, build or improve a dwelling to be used as the permanent residence of the owner or for his farm tenant, sharecropper, farm laborer, or farm manager.

(ii) In cases when an RH loan is being made simultaneously with an FO loan, an RH loan of \$1,500 or more is needed to buy, build, or improve a dwelling, or provide needed facilities related to the dwelling.

(iii) The dwelling constructed or improved must meet Section 502 RH loan requirements, being modest in size, design and cost.

(iv) The applicant must meet the eligibility requirements for the Section 502 RH loan and FO, SW, or RL loan.

(2) An RH loan may be made to an FO borrower to build or improve a dwelling and related facilities, who because of age, physical disability, or death of the spouse, is unable to operate the farm or carry on farming operations provided a decision has been made to continue with the FO loan.

(3) The Section 502 loan, when added to the unpaid principal balance plus past due interest of any FO, SW, RL, RH, or LH loan, plus other debts against the security given for an FmHA real estate loan or to be given for the Section 502 loan, will not exceed \$225,000 or the market value of the security for the loan, whichever is less. The \$225,000 limitation will not apply when an RH loan is necessary to repair or replace a dwelling or a domestic water system damaged or destroyed by fire, flood, windstorm or other casualty, and the RH loan will be used only to supplement the applicant's available assets or funds that are available from insurance loss payments or other sources.

(4) A loan may be made to an FO, SW, or RL applicant or borrower on the basis of real estate security or a Promissory Note only if the conditions of § 1822.10(c) are met.

(5) If a mortgage on the farm will be taken as security, a new appraisal will be prepared when the circumstances outlined in § 1822.17(a) exist.

(6) In determining the market value of the FO, SW, or RL farm in connection with a section 502 loan, when a new appraisal report is not required under § 1822.9 (c), the loan approval official will consider the previous appraisal report, if one is available, and the definition of market value in Subpart A of Part 1809 of this Chapter. The loan approval official's determination of market value of the farm or nonreal estate assets will be recorded on Form FmHA 440-3.

(n) *Mutual self-help housing loans.* Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior approval of the State Director. He will, therefore, submit complete information about each family in the proposed self-help project to the State Office for review and request authority to proceed. Information submitted will include items such as the family's size, income, age of family members who will work on the dwelling, the size and cost of the planned dwelling, estimated savings and the amount of the needed loan. Exhibit A, "Mutual Self-Help Housing Guidelines," available in all FmHA offices, will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction and the extent to which the borrower will be able to

meet loan payments during this period. If the applicants will not have enough income to meet the scheduled loan payments during the construction period, funds may be included in the loan to pay that part of the installments that the borrower is unable to pay during the construction period. In these cases, the amount of the installments will be the same as for any other 502 RH loan.

(o) *RH loans to Indians secured by trust or restricted land.* The Department of Agriculture and the Department of Interior have mutually agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restriction against alienation subject to statutes under which they may, with the approval of the Secretary of the Interior, give mortgages on their land which are valid and enforceable. These statutes include, but may not be limited to, the Act of March 29, 1956 (70 Stat. 62.63). Land in trust or restricted status purchased with FmHA loan funds may be acquired and held by the Indian in trust or restricted status.

(1) When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA the local representatives of the BIA will furnish requested advice and information with respect to the property and each applicant. The request will indicate the specific information needed.

(2) The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State regulation will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under such conditions.

(p) *Interest credits.* Interest credits will be granted and serviced in accordance with Exhibit E of this Subpart.

(q) *National flood insurance.* Loans made to buy, build or repair dwellings located in an area having special flood or mudslide hazards are subject to the conditions of Subpart B of Part 1806 of this Chapter.

§ 1822.3 Source of funds and rates and terms.

(a) *Source of funds.* Insured loan funds from the Rural Housing Insurance Fund (RHIF) will be used for all section 502 loans.

(b) *Interest rate per annum on unpaid principal.* Loans will be made at interest rates specified in Subpart A of Part 1810 of this Chapter.

(c) *Amortization period.* Each loan will be scheduled for repayment over a period not to exceed 33 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. A loan not secured by a real estate mortgage will be scheduled for repayment over a period not to exceed 10 years from the date of the note.

§ 1822.9 Technical service.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with Subpart A of Part 1804 of this Chapter.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this Chapter.

(c) *Appraisal.* The value of property securing RH loans will be determined as follows:

(1) When a mortgage will be taken on a nonfarm tract or small farm or leasehold interest in a nonfarm tract or small farm to secure a loan of \$5,000 or more, an appraisal of the security property will be made in accordance with Part 1809 of this Chapter. A small farm for the purposes of this Subpart is a farm as defined in § 1822.3(a) which has value primarily as a residence rather than for the production of agricultural commodities. Repayment of the RH loan will not be primarily dependent on farm income.

(2) An appraisal of the security property will be made in accordance with Subpart A of Part 1809 of this Chapter when a mortgage will be taken on a farm tract or leasehold interest in a farm tract to secure a loan of \$5,000 or more.

(3) An appraisal of the real estate or leasehold interest is not required unless the County Supervisor or loan approval official is uncertain as to the adequacy of the security for loans of less than the amounts described in paragraphs (c) (1) and (2) of this section or when an RH loan is being made to an FmHA real estate borrower and the appraisal report in the borrower's case folder indicates the value of the security property is adequate to secure the total real estate indebtedness including the planned loan.

(4) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(5) When real estate is to be given as security and an appraisal is not made, the County Supervisor will indicate on a separate sheet his estimate of the market value of the property.

(d) *Title clearance and legal services.*

(1) When real estate will be taken as security (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with Part 1807 of this Chapter. Except for property to be purchased, the applicant will be requested to furnish title evidence at any time during the loan processing period after the County Supervisor determines that the loan probably will be made. If the County Supervisor is uncertain as to whether the loan will be approved, he will not require the applicant to furnish title evidence until after loan approval. For property to be acquired, title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is take as security without title clearance or use of legal services in accordance with § 1822.10(a) (2), each applicant will be required to submit evidence of ownership of his farm or nonfarm tract. This may be the original or a certified or photostatic copy of his deed, purchase contract, or other instrument evidencing ownership. When the County Supervisor is uncertain as to whether or not the applicant is a qualified owner, he will take such actions as he considers necessary, such as requiring the applicant to furnish additional information or obtaining the advice of the OGC regarding the evidence of ownership submitted and any further information or action that may be needed. Proof of ownership need not be as much as that required by Part 1807 of this Chapter. It may consist of evidence which, considered all together, would be sufficient to convince a reasonably well informed and prudent person that the applicant is the owner. It may include, for example, such evidence as the levy and payment in the applicant's name of taxes on the real estate and affidavits by others in the community to the effect that the applicant has occupied the property as the apparent owner for a given length of time and is believed and generally reputed to be the owner. No loan will be made if the County Supervisor has actual knowledge that the applicant does not have a marketable title to the property.

§ 1822.10 Security.

(a) *General.* Loans other than those excepted under paragraph (c) of this section will be adequately secured to protect the interest of the FmHA during the scheduled repayment period.

(1) Any loan of more than \$5,000 and any loan scheduled for repayment in more than 15 years from the date of the note will be secured by a real estate mortgage as provided in paragraph (b) of this section.

(2) A loan of not more than \$5,000 scheduled for repayment in not more than 15 years from the date of the note may be secured by the best real estate mortgage obtainable on the property as provided in paragraph (b) (7) of this section.

(3) Loans of \$2,500 or less scheduled for repayment in not more than 10 years from the date of the note may be made on the basis of a Promissory Note in accordance with paragraph (c) of this section.

(b) *Real estate.* When a real estate mortgage is required, a mortgage will be obtained on all interest in the entire farm or nonfarm tract on which the loan is made, except as provided in this paragraph and subject to the exceptions and reservations waived under § 1807.2(d) of this Chapter. When necessary to supplement the applicant's equity in the farm or nonfarm tract to be mortgaged, or to facilitate servicing the loan, a mortgage may also be taken on other real estate owned by the applicant.

(1) If the applicant's title to any part of the farm or nonfarm tract is defective (in the sense that it is not good title marketable in fact as defined in Part 1807 of this Chapter or that the State law will not recognize a recordable mortgage upon it) and the defect cannot be cured at a reasonable cost, the loan may be made subject to the following conditions:

(i) No security value will be accorded to the parcel of real property to which title is defective.

(ii) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective.

(iii) A real estate parcel to which title is defective will be included in the mortgage unless the loan approval official, with the advice of the OGC determines that the applicant's interest cannot be subjected to a recordable mortgage recognized by the State law, or to include the parcel would unduly complicate loan servicing or liquidation.

(2) A junior mortgage may be taken as security for a loan provided:

(i) The prior mortgage as affected by the State law does not contain provisions for future advances, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters that may jeopardize FmHA's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified, waived, or subordinated.

(3) When a mortgage is required by paragraph (a) (1) of this section to secure a loan to an applicant as lessee of a farm or nonfarm tract, a valid and enforceable mortgage on his leasehold interest will be required. The term of the lease will be as required in § 1822.7(j).

(2). Special provisions necessary to protect the interest of the Government, such as items enumerated in § 1822.7(j)

(1), will be included in the lease, a consent to mortgage, a subordination, or other appropriate instrument executed by the lessor and the borrower.

(4) For a loan on a farm or nonfarm tract in which the applicant owns or will own an undivided interest, the interests of all the co-owners will be included in the mortgage, with the following exceptions:

(i) When not required under § 1822.7 (1) (5).

(ii) When one or more of the co-owners are not legally competent or cannot be located or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by the State Director of the County Supervisor's recommendation accompanied by a full statement of ownership and conditions which justify the exclusion. In such a case the loan may not exceed the market value of the equity

represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests and from rights of partition accruing to the owners of the nonmortgaged interests. All legally competent co-owners using or occupying the property will be required to sign the mortgage.

(iii) Where the applicant owns only an undivided interest in part of the farm and seeks a loan to build or improve a dwelling or related facilities on another part in which he owns the entire interest, or owns only an undivided interest in a farm and seeks a loan to purchase the entire interest in a building site, with or without a building which will be part of the farm, the interests of the applicant's co-owners may be excluded from the security requirements upon approval by the State Director, if he finds that the loan will be adequately secured by the applicant's equity in the wholly owned tract; the market value of the jointly-owned tract is at least equal to the debts against it; the joint ownership of part of the farm and its operation by the applicant, or the applicant's participation in its operation have been and are likely to continue to be successful; and all other requirements for a sound loan are met; *Provided*, That if in such a case debts against the jointly-owned land are liens on the wholly-owned tract or on land in which the applicant owns no interest, no loan may be made without prior approval by the State Director after review of the County Supervisor's and District Director's recommendation accompanied by full information, including a statement regarding the ownership of all the lands involved, the nature and permanency of the joint operation, and the nature, amount and holder of such debts. In cases within this Subparagraph, whether undivided interests may be omitted from the RH mortgage securing a loan which includes refinancing will be determined by the State Director after review of the County Supervisor's and District Director's recommendation supported by full information.

(5) When the holder of a life estate qualifies as an owner, as defined in § 1822.3 of this Subpart, the remaindermen will be required to join in executing the mortgage with the following exception: When one or more of the remaindermen are not legally competent or cannot be located or the remainder rights are divided among such a large number of remaindermen that it is not practicable to obtain the signatures of all the remaindermen, the mortgaging of remainder interests not exceeding 50 percent of the total remainder interest may be excluded from the security requirements upon prior approval by the State Director after review of the County Supervisor's and District Director's recommendations accompanied by a memorandum stating complete ownership information and circumstances which justify the exclusion. In such cases, the loan

may not exceed the market value of the equity represented by the interests of those who sign the mortgage, determined with due regard to all adverse factors involved. Remaindermen will be required to sign the note when necessary for a sound loan or to obtain the required security.

(6) When the applicant is the owner of a farm, a mortgage will be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include or be close to farm service buildings, be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, and be contiguous to a public road.

(ii) In all other cases, not complying with paragraph (b) (6) (i) of this section, the tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(iii) If the tract to be mortgaged is covered by a prior lien which also applied to other land, the tract to be given as security must either:

(A) Be released from the prior lien to permit a first lien for the RH loan; or

(B) Provide adequate security for the entire prior lien debt and the RH loan, as well as comply with paragraph (b) (2) of this section.

(iv) All other requirements for a sound loan are met.

(7) For a loan of \$5,000 or less and scheduled for repayment in not more than 15 years as provided in paragraph (a) of this section, the best real estate mortgage obtainable may provide security. The title requirements of Part 1809 of this Chapter will not be applicable. Applicants, however, must be owners and in no case may a loan be secured in this manner when the County Supervisor has actual knowledge that the applicant does not have mortgageable title to the property. Evidence of ownership must comply with § 1822.9(d) (2). Neither a designated loan closing attorney nor title insurance company will be used unless the loan approval official determines that the requirements of Part 1809 of this Chapter should be met to assure repayment or to accomplish the objective of the loan.

(c) *Promissory note.* A loan of not more than \$2,500 scheduled for repayment in not more than 10 years from the date of the note may be made on the basis of the borrower's Promissory Note without taking other security when the County Supervisor determines after objectively evaluating all the facts that:

(1) The applicant has a good reputation for paying his debts promptly;

(2) The applicant is in a strong financial position and will have sufficient income to readily meet all his obligations; and

(3) The applicant clearly has equity in the real estate being improved with loan funds at least equal to the amount of the proposed loan.

§ 1822.11 Processing applications and county committee certification.

(a) *Applications.* Applications for section 502 RH loans will be taken on Form FmHA 410-4, "Application for Rural Housing Loan (Nonfarm Tract)," or Form FmHA 410-1, "Application for FmHA Services," and processed in accordance with Subpart A of Part 1801 of this Chapter.

(1) Builders, brokers, contractors, and others including organizations such as those providing self-help assistance who can provide complete information on the applicant and the house that is to be purchased may assist in the assembly and processing of loan applications. Builders or sellers who received conditional commitments may also assist applicants in applying for an RH loan to buy a house for which a conditional commitment was issued in accordance with Subpart H of Part 1822 of this Chapter. The County Supervisor will meet with such interested parties to explain the eligibility requirements of RH loans, the size, design, cost and location of homes that can be financed; how applications will be handled; and the type of information that must be submitted. The information to be submitted is listed in Exhibit B of this Subpart.

(2) In any case in which there may be any likelihood that the applicant could obtain the credit he needs to supplement his available resources to provide an adequate dwelling, the County Supervisor will require the applicant to make a diligent effort to obtain credit from other sources.

(i) Applicants will be expected to apply for credit from lenders engaged in extending long-term housing credit in the area.

(ii) Applicants should be advised to request lenders to indicate the amount, interest rate, and terms of housing credit they would be willing to extend to the applicant.

(iii) When appropriate, the County Supervisor should verify evidence presented by an applicant that he cannot obtain adequate credit elsewhere.

(iv) Letters from the lenders and any other evidence indicating that the applicant is unable to obtain credit elsewhere will be included in the loan docket.

(v) In no case will a loan be made to an applicant who is able to obtain the credit he needs to supplement his available assets at terms he can reasonably be expected to pay.

(3) In any case in which a County Supervisor determines there is no possibility of the applicant's obtaining adequate housing credit elsewhere and, therefore, does not require the applicant to provide evidence that he has made an effort to obtain such credit, the County Supervisor will record his conclusion and the basis for it in the loan docket.

(b) *County committee certification.* The county committee will not be used to determine the eligibility of nonfarm applicants. However, in cases where repayment of the requested loan depends

on the successful operation of a farm, the county committee will be used to determine the eligibility of the applicant, the amount of the RH loan, and whether the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the purpose of the loan will be accomplished, unless use of the county committee is waived by a State regulation.

(c) *Optioning of real estate.* The County Supervisor should, if possible, prior to the applicant's selection of property he desires to purchase, advise him with respect to the size, design, quality, cost and location of the dwellings and dwelling sites suitable for the RH program. Generally, Form FmHA 440-34, "Option to Purchase Real Property," should be used; however, other option forms may be used if their provisions are acceptable.

§ 1822.12 Preparation of loan docket.

(a) *Farm and home plans or family budget forms.* Applicants who complete an application on:

(1) Form FmHA 410-4, "Application for Rural Housing Loan (Nonfarm Tract)," will also complete Form FmHA 431-3, "Family Budget," only when the following conditions exist:

(i) The family needs supervisory assistance in financial management;

(ii) The financial statement on the application is inadequate.

(2) Form FmHA 410-1, "Application for FmHA Services," will complete:

(i) Form FmHA 431-2 as prescribed in Subpart B of Part 1802 of this Chapter. When a loan is to be made to a non-operator farmowner, the columns in Table B, "Crops, Pasture, Etc.—Production and Sales," and Table C, "Livestock and Products—Production and Sales," of Form FmHA 431-2 pertaining to the operator's share will be changed to owner's share. If an application is being considered early in the crop year for a borrower who has a current Form FmHA 431-2, such form will be revised to show changes in the financial statement and significant changes in the planned operation; however, if the crop year is well advanced or completed, a farm and home plan will be developed for the ensuing year; and

(ii) Form FmHA 431-1 will also be prepared whenever needed in accordance with Subpart B of Part 1802 of this Chapter.

(b) *Agreements from prior lienholders.* When the loan is to be secured by a junior real estate mortgage, agreements will be obtained from prior lienholders to any extent necessary to comply with § 1822.10

(b) (2), including foreclosure or assignment notice agreements in States in which they are required by a State regulation issued under § 1807.2(f) of this Chapter.

(c) *Information concerning prior mortgage.* The applicant for a loan to be secured by a junior real estate mortgage will be required to furnish the County Supervisor, before the docket is assembled, a copy of each mortgage held by a prior lienholder and, if available, a copy

of each secured note or other obligation. In addition, the County Supervisor will be furnished a current statement signed by the mortgagee showing the amount of unpaid principal secured by the mortgage; the amount of any accrued interest; whether the account is current or the amount of any delinquency, with interest and principal shown separately; and, if a copy of the note is not furnished, its maturity date, payment schedule, interest rate, and a summary of any other provisions of the note. All these documents will be included in the docket for the information of the loan approval official and any cost incident to obtaining them will be paid by the applicant.

(d) *Information about cosigner.* When the note of a borrower will be cosigned by an individual or a corporation, information obtained from the cosigner will include a current financial statement, a statement of income and expenses, the nature of the cosigner's employment or business and a brief statement as to the cosigner's employment of business history. The information required from the cosigner will be supplemented by a statement by the County Supervisor as to the cosigner's financial condition and reputation for paying debts and any other information, such as a credit report, that will be of assistance to the loan approval official in determining the soundness of the loan. This information will be included in the docket.

(e) *Loan docket.* The loan docket will consist of the following properly prepared and executed forms as appropriate: Form FmHA 444-12, "Check Sheet for Rural Housing Loan Package;" Form FmHA 410-1, "Application for FmHA Services;" Form FmHA 410-4, "Application for Rural Housing Loan (Nonfarm Tract);" Form FmHA 410-5, "Request for Verification of Employment;" Form FmHA 410-8, "Applicant Reference Letter;" Form FmHA 431-2, "Farm and Home Plan;" Form FmHA 431-1, "Long-Time Farm and Home Plan;" Form FmHA 431-3, "Family Budget;" Form FmHA 440-2, "County Committee Certification or Recommendation;" Form FmHA 427-8, "Agreement with Prior Lienholder," (or similar form); Form FmHA 440-34, "Option to Purchase Real Property;" Form FmHA 424-1, "Development Plan," (including any plans, specifications, and cost estimates); Form FmHA 422-8, "Property Information and Appraisal Report (Rural Housing Nonfarm Tract);" Form FmHA 423-1, "Appraisal Report (Farm Tract)," (with attachments); Form FmHA 426-1, "Valuation of Buildings;" Form FmHA 444-6, "Interest Credit Agreement (Section 502 RH Loans);" Form FmHA 440-1, "Payment Authorization;" Form FmHA 440-3, "Record of Actions;" Form FmHA 444-2, "Housing Fund Analysis;" Form FmHA 440-35, "Acceptance of Option;" Form FmHA 440-41, "Disclosure Statement for Loans Secured by Real Estate;" Form FmHA 440-42, "Credit Sale Disclosure Statement;" Form FmHA 440-43, "Notice of

Right to Rescind;" Form FmHA 400-3, "Notice to Contractors and Applicants;" Form FmHA 400-6, "Compliance Statement;" Form FmHA 440-9, "Supplementary Payment Agreement;" Form FmHA 440-45, "Nondiscrimination Certificate (Individual Housing)." Other loan docket items: Title opinion, mortgage, title policy or report of lien search, if available, foreclosure notice agreement, original or certified copy of deed, purchase contract, lease, or other instrument of ownership, information on prior mortgage and information on cosigner. When the County Supervisor is the loan approval official, he may, in lieu of including the document evidencing ownership, include a statement in the docket indicating that he has seen and reviewed the document. Estimate of the value of any security not appraised on Form FmHA 422-1 or Form FmHA 422-8.

§ 1822.13 Loan approval.

(a) *Application of authority.* The State Director, District Director, and County and Assistant County Supervisors are authorized to approve or disapprove loans in accordance with Subpart B of Part 1810 of this Chapter. However, no initial or subsequent RH loan may be approved by the State Director without the consent of the National Office if the amount of the loan plus the unpaid principal balance and any past-due interest on liens against the security for the loan would exceed \$225,000. The loan docket and the State Director's recommendation should be submitted with any request for authority to approve a loan in excess of this limitation.

(b) *Limitations.* The authority as shown in Subpart B of Part 1810 of this Chapter is limited to cases in which:

(1) The proposed loan plus the total unpaid principal balance and any past-due interest on debts against the security for the loan will not exceed the prescribed loan limitation on RH loan approval authorities of various officials of the FmHA.

(2) The debt against any property taken as security for the loan will not exceed the appraiser's recommended market value of the property except in accordance with § 1822.7(e) (3).

(3) No significant changes have been made in the planned development considered by the appraiser when real estate will be taken as security.

(c) *Loan approval action.* (1) *Examination of loan.* The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations and that funds are available for the loan. In making this review, the loan approval official will determine that the applicant is eligible; funds are requested for authorized purposes only; the proposed development does not exceed authorized limitations; the proposed loan is sound; the site is suitable for the intended purpose and meets the requirements of applicable FmHA regulations; and all other pertinent requirements are met.

(2) *Approval or disapproval of a loan.* When a loan is approved, the loan approval official will:

(i) Indicate on all copies of Form FmHA 440-3 any condition that must be met before the loan is closed and specify the security requirement that the applicant will need to meet, such as a first real estate lien or a junior lien subject to certain liens and so forth. If title evidence is required in accordance with Part 1807 of this Chapter or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant's furnishing the required title evidence. When the applicant furnishes satisfactory title evidence, the County Supervisor will proceed with processing the loan, except that in those cases in which the title evidence does not comply with the conditions specified by the approval official, the docket will be reconsidered by the loan approval official.

(ii) Sign the approval certification on the original only and conform all copies of Form FmHA 440-3 and insert his title in the space provided.

(iii) Sign the original and one copy of Form FmHA 440-1 and insert his title in the space provided.

(iv) If a loan is not approved after the docket has been developed, the reasons for such action will be shown on the original Form FmHA 440-3; it will be initialed and dated, and the County Supervisor will notify the applicant of the disapproval and the reasons. If the notice was not in writing, the County Supervisor will record in the running record a brief summary of the discussion with the applicant.

(3) *Distribution of docket forms.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved:

(i) *To the Finance Office:*

(A) Form FmHA 440-3 (original and one copy). After being processed in the Finance Office, a conformed copy will be returned to the County Office.

(B) Form FmHA 444-2 (original).

(C) Form FmHA 440-1 (original and copy).

(ii) *To the State Office.* If the loan is approved by the County Supervisor, an unsigned copy of Form FmHA 440-3 and a copy of Form FmHA 444-2. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440-3 and a copy of Form FmHA 444-2 will be retained in the State Office.

(iii) *To the borrower.* A signed copy of Form FmHA 440-1, the original of Form FmHA 440-41, and, if applicable, the original and copy of Form FmHA 440-43 and a copy of Form FmHA 440-34.

§ 1822.14 Actions subsequent to loan approval.

(a) *Requesting check.* When the loan has been approved, approval conditions can be met, any necessary curative actions have been taken to provide a satisfactory title to any real estate security, and a tentative date has been set

for loan closing, the County Supervisor or his delegate will check the "Check is Hereby Requested" block of the copy of Form FmHA 440-3 for issuance of the check, sign and date the portion of the form to request the check, and send it to the Finance Office. If a real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval, or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 30 days from the date of the check, the loan check may be requested at the time of loan approval by checking the "Check is Hereby Requested" block of the original of Form FmHA 440-3 and signing and dating the portion of the form to request the check.

(b) *Handling loan checks.* (1) When the loan check or borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Part 1803 of this Chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan treasury check is received and the loan cannot be closed within 45 days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA regulations.

(c) *Cancellation of loan.* Loans may be canceled before loan closing by the use of Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation," prepared in accordance with guidelines for preparation of this Form available in all FmHA offices.

(1) When a check is received in the County Office, the County Supervisor will return it, with a copy of Form FmHA 440-10 to the Regional Disbursing Center, U.S. Treasury Department, Kansas City, Missouri 64142.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter.

(d) *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised accordingly and reprocessed.

(e) *Property insurance.* Buildings on the property which is to be taken as security for the loan will be insured in accordance with Part 1806 of this Chapter.

§ 1822.15 Loan closing actions.

(a) *Review of financial status.* The loan will be closed, based on the applicant's financial circumstances at the time of loan approval, provided the loan is closed within 90 days after approval and the County Supervisor has no knowledge of a significant change in the ap-

plicant's financial status. Further review of the applicant's financial status, therefore, is not required at the time of loan closing unless the loan is closed more than 90 days after the date of loan approval or evidence is brought to the attention of the County Supervisor or other loan closing official which indicates that the applicant's financial status has changed significantly. In cases where the County Supervisor finds that, prior to loan closing, the adjusted annual family income increased and exceeds by not more than \$1,000 the limit for loans to moderate-income families for the state, as provided in Exhibit D of this Subpart, the loan may be closed provided the State Director so authorizes after he finds that the dwelling was or is being built or repaired for the specific applicant or a binding construction or sales contract for a specific dwelling has been executed by the applicant and an acceptable contractor or seller; other credit is not available for financing the property; and failure to close the loan would result in a financial hardship for the applicant. Furthermore, in cases where the loan was approved on the basis of interest credits and the County Supervisor finds that, prior to loan closing, the adjusted annual family income increased and exceeds by not more than \$1,000 the limit for loans to low-income families for the state, as provided in Exhibit C of this Subpart, the loan may be closed and interest credits granted on the basis of the family's new circumstances (e.g., appropriate reduction in amount of interest credit) provided the State Director so authorizes after he determines that interest credits are necessary to enable the applicant to repay the proposed RH loan.

(b) *Preparation of note, mortgage and loan closing procedure.* Any changes made in the printed or typewritten text of any instrument by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the instrument.

(1) *Real estate mortgage.* A loan secured by a real estate mortgage (including a mortgage on a leasehold) will be closed in accordance with Part 1807 of this Chapter. Form FmHA 427-1, "Real Estate Mortgage for _____," will

State

be used.

(i) For a loan secured by a mortgage on a leasehold, the following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted in the mortgage just before the legal description of the real estate: "All Borrower's right, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created, executed and established by certain Lease dated _____, 19____, by _____ as lessor(s), in Book _____, Page _____, of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in

and to said Lease, covering the following real estate."

(ii) For a loan secured by a mortgage on a leasehold, an additional covenant will be inserted in the mortgage to read as follows:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(2) *Promissory note.* Form FmHA 440-16, "Promissory Note," will be used for loans made under this Subpart. The note will be prepared and signed in accordance with Part 1807 of this Chapter, the provisions of this Subpart concerning cosigners, § 1822.10(b) (5) of this Subpart, and the guidelines for preparation of this Form available in all FmHA offices. The payment provisions of the note will be completed in accordance with these guidelines and as follows:

(i) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(ii) The annual payment provision will be used only for borrowers who do not regularly receive monthly income.

(A) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt-paying ability of the borrower. The amount of the first installment may be less, but not more than a regular annual installment.

(B) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to January 1 of the calendar year following the calendar year in which the loan is closed.

(C) Form FmHA 440-9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(3) *Collection of first installment.* If the annual payment provision of the note is used, the first installment of a loan closed during December will be collected at the time of loan closing. Also, for a loan to an applicant involved in an authorized mutual self-help project, the entire amount of any funds included in the loan for paying installments due during the first and second years after the loan is closed will be collected and applied as a regular payment at the time of loan closing.

(4) *Direct payments.* New borrowers, including transferees, will be provided direct payment cards and will make payments directly to the Finance Office. Borrowers incapable of making direct payments to the Finance Office will have their payments cards retained in the County Office. Payments made will be forwarded to the Finance Office with the appropriate direct payment card in the Finance Office mail. Cash payments, re-

funds, and extra payments made by borrowers will be handled in accordance with Part 1862 of this Chapter.

(5) *Real estate mortgage after filing.* When the real estate mortgage is returned by the filing official or loan closing official, the original will be filed in the borrower's case folder. If the original is retained by the filing official in his official records, a copy conformed to show the recording data including the date and place of recording and the book and page number will be filed in the borrower's case folder. A copy of the mortgage will be delivered to the borrower.

(c) *Other actions.* (1) *Assignment of income from real estate to be mortgaged.* Unless otherwise authorized by the State Director in an individual case, income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with Subpart A of Part 1872 of this Chapter, including provisions for written consent of any prior lienholder. However, in small nonfarm tract cases, the State Director may, by State regulation, authorize withholding transmittal of assignments to lessees for execution until production is obtained. The State Director may also, by issuing a State regulation, eliminate the requirement of taking an assignment if the security is otherwise adequate; payment of the loan is reasonably assured from other sources; and the income has already been committed for other purposes or must be relied on by the applicant for essential living or operating expenses, or is so small that in the opinion of the County Supervisor the execution of an assignment is not justified. When the County Supervisor deems it advisable, in other than small nonfarm tract cases, assignments may also be taken on all or a portion of income to be derived from nondepleting transactions such as income from bonus payments or annual delay rentals which will be assigned and disposed of in accordance with Subpart A of Part 1872 of this Chapter.

(i) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used except that if the form is legally inadequate in a particular State it may be revised as needed with the approval of the OGC.

(ii) The County Supervisor, upon advice of the designated attorney, title insurance company, or the OGC, as appropriate, may require acknowledgement and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(iii) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 405-1, "Management Systems Card—Individual (Rural Housing Only)," to insure that the proceeds, or the specified portion of the proceeds, assigned to FmHA from the transactions are remitted at the proper time.

(2) *Owner's policy of title insurance.* If an owner's policy of title insurance

is obtained, it will be delivered to the borrower as soon as it is received from the title insurance company.

(3) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record. In other cases a loan is closed when the borrower executes the note and any other required instruments.

(4) *Water stock certificates or other such collateral.* When water stock certificates or other such collateral are part of the security, they will be retained in the County Office. A notation will be made on Form FmHA 405-1 or Form FmHA 405-5, as appropriate, showing that such security has been retained.

(5) *Account record and case folder.* The account and case folder will be established in accordance with FmHA regulations.

§ 1822.16 Rural Housing Disaster loans.

(a) Rural Housing Disaster (RHD) loans may be made to applicants meeting the eligibility requirements of § 1822.4 to repair or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm, or lightning which occurred after November 1, 1974, as follows:

(1) Loans may be made to eligible nonfarm families who owned and personally occupied the dwelling as their permanent residence provided the loss was not the result of a major disaster designated by the President or a natural disaster designated by the Administrator of the Small Business Administration.

(2) Loans may be made to eligible farmers to repair or replace their dwellings provided the loss was not the result of a major disaster designated by the President or natural disaster designated by the Secretary of Agriculture.

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide a building which is adequate but modest. No new dwelling constructed will exceed the limit established by § 1822.7 (b) (1) of this Subpart.

(c) *Interest rate and source of funds.* (1) *Interest rate.* RHD loans will be made at an interest rate of 5 percent.

(2) *Source of funds.* Insured loan funds will be used for RHD loans.

(d) *Approval authorization.* The State Director, County and Assistant County Supervisors are authorized to approve RHD loans in accordance with Subpart B of Part 1810 of this Chapter for section 502 RH loans. A disaster loan will be approved only after the loan approval official determines that the loss or damage was due to a natural disaster which occurred after November 1, 1974; the disaster loan application was filed within

12 months after the date the loss occurred; the applicant is using his available assets, including insurance loss payments, and other assistance to the extent available to repair or replace the damaged or destroyed buildings.

(e) *Nature of loss.* On Form FmHA 440-3, each case will be identified by checking "other" in the "Type of Assistance" block and inserting "RHD" in the space provided.

(f) *Deferred payments.* The initial payments of principal but not interest may be deferred so as not to become due until as late as the third January 1 after the date of loan closing subject to all of the following conditions:

(1) The applicant, as a result of the loss suffered from the disaster, has had a substantial loss of income; or his necessary debts, including the proposed RHD loan, have increased substantially as a result of the disaster.

(2) The income loss or increase in debts must be sufficiently great so that the applicant will not likely be able to pay in full the installments that ordinarily would be due during the proposed deferment period and also meet his other necessary obligations.

(3) The applicant's other debts have been adjusted by reduction, reamortization, extension, or other means to the extent possible by negotiation with other creditors.

(4) The applicant's income will be sufficient after the deferment period to enable him to meet the payments on the RHD loan and all his other obligations.

§ 1822.17 Subsequent Section 502 loans.

A subsequent Section 502 loan is a Section 502 loan made to a borrower who has an existing Section 502 RH loan. Subsequent loans may be made for the same purposes and under the same conditions and limitations as initial loans, except as provided in this Section.

(a) The subsequent loan will be processed in the same manner as initial loans, except that a new appraisal report will be required only when real estate will be taken as security and at least one of the following exists:

(1) The property was not appraised in connection with the initial loan.

(2) The latest appraisal report of the real estate is over 2 years old.

(3) The physical characteristics of the property have changed significantly.

(4) The County Supervisor or loan approval official requests a new appraisal report.

(b) A subsequent RH loan made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loan or loans, does not exceed \$2,500.

(c) When a real estate mortgage is required in connection with a subsequent RH loan, any outstanding RH notes will be described in the mortgage.

(d) The subsequent loan will bear interest at a rate determined in accordance with Subpart A of Part 1810 of this Chapter. It will not necessarily be the same rate as charged on the initial loan.

§ 1822.18 Reamortization of existing FmHA debt(s).

In connection with making an RH loan to a borrower currently indebted for an FO, RH, RL or SW loan, such loans may be reamortized with the prior authorization of the District Director. Authority to reamortize an account will be granted in those cases in which it is determined the borrower cannot reasonably be expected to meet the installments due unless the account is reamortized. When a loan is reamortized, it will be processed in accordance with § 1861.9(e) (i) of this Chapter.

EXHIBIT B—INFORMATION REQUIRED TO PACKAGE APPLICATIONS FOR SECTION 502 RURAL HOUSING LOANS

1. *General Information.* Persons or organizations that want to assist applicants in submitting applications to the Farmers Home Administration (FmHA) should first meet with the County Supervisor. If these discussions indicate that the person or organization is capable of satisfactorily delivering complete information about applicants and houses that are likely to qualify for Rural Housing (RH) loans, the County Supervisor will review in detail the information that is needed and the processing steps required in completing an RH loan. The County Supervisor will provide assistance and guidance to all packagers in obtaining the required information. The guide "Packaging Applications for Rural Housing Loans" and the following FmHA Forms and regulations may be provided to prospective packagers as needed:

(a) Form FmHA 444-12, "Check Sheet for Rural Housing Loan Package."

(b) Form FmHA 410-4, "Application for Rural Housing Loans (Nonfarm Tract)."

(c) Form FmHA 410-1, "Application for FHA Services."

(d) Form FmHA 410-5, "Request for Verification of Employment."

(e) Form FmHA 422-8, "Property Information and Appraisal Report—Rural Housing Nonfarm Tract."

(f) Form FmHA 424-2, "Dwelling Specifications."

(g) Form FmHA 440-34, "Option to Purchase Real Property."

(h) Subpart L of this Part, "Fair Housing Marketing."

2. *Information packager or applicant must provide.* (a) *Information to be submitted for all applicants.* (1) The applicant family should complete the appropriate application form as prescribed in Subpart A of Part 1801 of this Chapter.

(i) All information on the form must be complete and accurate.

(ii) If the applicant obtains income from his own business, the current operating statement must be attached.

(iii) The application form must be dated and signed by the applicant.

(2) Form FmHA 410-5 will be used to check employment and income on applicants. The Form should be mailed to the employer to be completed and returned directly to the County Office. FmHA will not provide franked envelopes for this purpose unless the form is sent to the employer directly by the County Supervisor.

(3) In cases where it appears that the applicant has sufficient income or assets to qualify for housing credit from another source, he must make a diligent effort to obtain such credit from at least two lenders who customarily make long-term housing loans in the area. If such lenders are unable to provide the credit needed, their written response stating why they cannot assist the

applicant should be included in the loan package.

(4) The information specified in paragraph 2.(b) or 2.(c), whichever is applicable, will be submitted. In case FmHA has issued a conditional commitment on the property, information on the house will be on file in the County Office and need not be resubmitted.

(5) If a house to be purchased is under construction, the loan will not be closed until it is completed. In a such a case the information in paragraph 2(c) will be submitted.

(b) *Information to be submitted for loans to build or rehabilitate homes.* The information requested on the front page of Form FmHA 422-8 will be submitted along with the completed Form. This applies regardless of whether a conditional commitment is being requested in connection with the package. When Form FmHA 424-2 is completed, item 31 of the Form should include a complete description of the foundation plantings, trees, seeding or sodding that are included in the contract.

(c) *Information to be submitted for loans to buy existing homes.* (1) A signed or certified copy of an option on the property. The option must provide that any payments made by the applicant will be refunded if the loan is not made. From FmHA 440-34 may be used for this purpose.

(2) A termite certification whenever required.

(3) In case major improvements are involved, submit three sets of complete drawings and specifications of the work that must be done, and a contractor's bid or a reliable cost estimate.

(4) If the house is under construction or less than a year old and an individual water or sewage system is involved, include a certification by the builder that the house and any water and waste disposal system have been or will be built or installed in accordance with the local building codes and plans and specifications. Such plans and specifications will also be submitted. Evidence of approval by health authorities having jurisdiction in the area also will be included. If the house is a year or more old, the County Supervisor will satisfy himself that the water and/or sewage system is functionally adequate.

(5) Form FmHA 422-8 with Part I completed. Also the information concerning the applicant's name and address on the bottom of the first page should be completed.

(6) Direction map to the property.

(7) Plot plan drawn to scale showing house location and related facilities.

3. *Review and acceptance of completed package.* During the initial discussions an agreement should be reached with packagers that loan packages will be delivered to the County Office assembled in the order shown on Form FmHA 444-12. This form must be signed by the packager and be attached; otherwise, the packaged application will not be accepted. The County Supervisor should review each loan package when it is submitted and request any additional information needed. If the applicant is not present when the application is presented, the County Supervisor ordinarily will not proceed with the processing of the loan until the applicant family has been interviewed. The County Supervisor, however, will in all cases, interview the applicant prior to approving the requested loan in order to reach a proper understanding with the applicant as to the basic loan making and servicing policies, the responsibilities of borrowers, and the benefits which may be expected from FmHA assistance.

(a) If the applicant appears to be qualified and all needed material is available, the County Supervisor will complete an appraisal

of the property and the processing of the application.

(b) If a loan can be approved, the County Supervisor will notify the applicant and inform him of any requirements that must be met prior to closing the loan. If for any reason a loan cannot be made, the County Supervisor will notify the applicant and the packager. Applicants should also be informed that in these cases, they should visit the County Office if they have any questions about the actions taken on their loan applications.

4. *Packagers' responsibilities.* Packagers should fully understand their responsibilities in helping applicants to assemble their RH loan applications. They should also understand that no fees may be charged for providing this service.

5. *District directors' review of loans originated by application packers.* District Directors are responsible for reviewing the file of a representative number of borrowers whose RH application was submitted to the County Office by a packager. At least 5 percent of the cases packaged by each packager working in the county will be reviewed. The folders reviewed will be randomly selected and reviewed at scheduled office visits throughout the year. The review will be made to determine whether: The applicant's income was properly verified; any credit report received was mailed from the Credit Reporting firm directly to the County Supervisor; the County Supervisor interviewed and counseled with the applicant prior to loan approval; the applicant was eligible for the RH assistance granted; and the loan was in accordance with FmHA procedures. Any incidence of unethical activity by a packager or the approval of improper loans by a County Supervisor will be reported promptly to the State Director for appropriate handling.

(a) A report on packaging activity will be submitted annually for each County Office with Form FmHA 401-1, "Operations Review Questionnaire." The report will indicate:

(1) The number of packagers submitting loan dockets; and

(2) The number of loan dockets reviewed; and

(3) The number of cases where the packagers submitted inaccurate information about a loan applicant; and

(4) The action taken to further train packagers or to suspend, or debar packagers from further participation in FmHA programs because of repeated failure to provide accurate information about loan applicants, or because a packager falsified information he submitted for an applicant.

(b) The State Office will prepare a summary for the State and include it with the operation review summary.

EXHIBIT C—MAXIMUM ADJUSTED INCOME FOR LOW-INCOME FAMILIES

State:	Maximum adjusted income
Alabama	\$ 8,500
Arizona	8,500
Arkansas	8,500
California	8,500
Colorado	8,500
Connecticut	8,500
Delaware	8,500
Florida	8,500
Georgia	8,500
Idaho	8,500
Illinois	8,500
Indiana	8,500
Iowa	8,500
Kansas	8,500
Kentucky	8,500
Louisiana	8,500
Maine	8,500

State:	Maximum adjusted income
Maryland	\$8,500
Massachusetts	8,500
Michigan	8,500
Minnesota	8,500
Mississippi	8,500
Missouri	8,500
Montana	8,500
Nebraska	8,500
Hawaii	10,000
Nevada	8,500
New Hampshire	8,500
New Jersey	8,500
New Mexico	8,500
New York	8,500
North Carolina	8,500
North Dakota	8,500
Ohio	8,500
Oklahoma	8,500
Oregon	8,500
Pennsylvania	8,500
Puerto Rico	8,500
Rhode Island	8,500
South Carolina	8,500
South Dakota	8,500
Tennessee	8,500
Texas	8,500
Utah	8,500
Vermont	8,500
Virginia	8,500
Virgin Islands	8,500
Washington	8,500
West Virginia	8,500
Wisconsin	8,500
Wyoming	8,500
Alaska	12,600

EXHIBIT D—MAXIMUM ADJUSTED INCOME FOR MODERATE-INCOME FAMILIES

State:	Maximum adjusted income
Alabama	\$10,300
Arizona	12,800
Arkansas	10,200
California	12,900
Hawaii	13,500
Nevada	12,900
Colorado	12,900
Florida	11,700
Georgia	11,600
Idaho	12,300
Illinois	12,900
Indiana	12,900
Iowa	12,800
Kansas	11,900
Kentucky	10,200
Louisiana	10,800
Maine	12,200
Michigan	12,900
Minnesota	12,500
Mississippi	10,200
Missouri	11,500
Montana	12,700
Nebraska	11,500
Delaware	12,900
New Jersey	12,900
Maryland	12,900
New Mexico	10,900
New York	12,900
North Carolina	11,500
North Dakota	11,500
Ohio	12,900
Oklahoma	10,300
Oregon	12,900
Alaska	16,500
Pennsylvania	12,900
South Carolina	11,500
South Dakota	11,000
Tennessee	10,400
Texas	11,400
Utah	12,600
Vermont	12,900
Connecticut	12,900
Massachusetts	12,900
New Hampshire	12,900
Rhode Island	12,900
Virginia	12,100

State:	Maximum adjusted income
Washington	\$12,900
West Virginia	10,700
Wisconsin	12,900
Wyoming	12,900
Puerto Rico	10,200
Virgin Islands	12,900

EXHIBIT E—INTEREST CREDITS

1. *Purpose.* This Exhibit outlines the policies and conditions under which interest credits will be allowed on section 502 RH loans.

2. *Definitions.* As used in this Exhibit:

(a) "Borrower" means an RH borrower who has a low income and is indebted for a section 502 insured loan that was approved on or after August 1, 1968.

(b) "Interest Credit Agreement" means an agreement between Farmers Home Administration (FmHA) and the borrower executed on Form FmHA 444-6 of Form FmHA 444-A6, "Interest Credit Agreement (Section 502 RH Loans)," which provides for interest credits on his loan.

(c) "Review period" means the months of August, September, and October for all borrowers who signed annual installment Promissory Notes and are not now receiving interest credit or whose Interest Credit Agreement expires December 31. The "review period" for borrowers who signed monthly installment Promissory Notes will be the third, fourth, and fifth months prior to the expiration date of the existing Interest Credit Agreement or the anniversary date of the initial loan if the borrower is not now receiving interest credits.

(d) "Substantial change" means a change in a borrower's circumstances that warrants a review of his situation before the next scheduled review period. A change includes, but is not limited to, events such as:

(1) Either his current family income has been significantly reduced or increased; or his family size has changed; and

(2) As a result of either change in income or family size or both, the annual interest credit to which he would be entitled has been increased or decreased by at least \$100. "Substantial change" does not apply to circumstances that warrant cancellation of an agreement in accordance with paragraph 8.

(e) "Real estate taxes" for interest credit purposes means the amount of real estate taxes and assessments that will be actually due and payable on the dwelling and the dwelling site reduced by the amount of any tax exemptions available to the borrower regardless of whether such exemptions are actually claimed and received. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans and others.

(f) "Monthly payment borrowers" are those who have signed monthly payment notes and should receive monthly Interest Credit Agreements.

(g) "Annual payment borrowers" are those who have signed annual installment notes and should receive annual interest credit. This includes borrowers converted to monthly payments.

3. *Eligibility for interest credits.*—(a) *Initial loans.* An interest credit may be granted to a qualified borrower provided:

(1) He meets the eligibility requirements of a section 502 RH loan, can qualify for an interest credit under this Exhibit, and, as a general rule, has a low income and a low net worth. Interest credits for applicants with incomes or net worths somewhat above the low level may be justified under subdivisions (i) and (ii) of this subparagraph. In determining whether an applicant is entitled to an interest credit, the current family income information must be correct,

the computations must be accurate, and care must be taken to exercise good judgment.

(i) In no case will an interest credit be made to a borrower whose adjusted annual family income exceeds the limit established for the State as indicated in Exhibit C of this Subpart, unless exceptions are authorized by the State Director in accordance with § 1822.15(a) or by the National Office.

(ii) No Interest Credit Agreement may be entered into with an applicant who has a net worth of more than \$5,000, excluding the value of household goods and the debts against them, without prior authorizations from the State Director. For the purpose of determining whether exceptions are justified, the State Director will consider the nature of assets, particularly whether they are assets upon which an applicant, such as a farmer, is currently dependent for a livelihood or which could be used to reduce or eliminate the need for an interest credit. Elderly families will be permitted to retain a reasonable reserve for necessary health and maintenance expenses.

(2) The loan is approved on or after August 1, 1968.

(3) The loan is to buy, build or improve a home and related facilities, including a building site, or to refinance debts as authorized in § 1822.7(c).

(4) The home will be personally occupied by the borrower and his family.

(5) The home is modest in size, design and cost. A family with an income so low that it is unable to make the monthly or annual installments on an RH loan without interest credit assistance cannot afford a large or elaborate home. The interest credit assistance is designed to help a family have a decent home but it must not be used to finance housing in excess of the actual basic needs of the family nor should it include desirable but unnecessary features or amenities.

(6) The loan will be amortized over 33 years unless authorized otherwise by the State Director based on complete documents of the justifiable reasons on individual case basis. In no case will interest credits be granted on a loan being made which is amortized for less than 25 years.

(7) The amount of the interest credit will exceed \$60 annually or \$5 monthly.

(b) *Subsequent loans.* For subsequent loans, interest credits are authorized in the following types of situations:

(1) For a borrower who has an initial loan with or without interest credits, an Interest Credit Agreement can be executed at the time the subsequent loan is closed and will be prorated to both loans. In such cases, any existing Interest Credit Agreement will be canceled and the new Interest Credit Agreement will become effective on the date the subsequent loan is closed. The expiration date of the new Interest Credit Agreement will be:

(i) The second December 31 after the date of the agreement for annual installment notes.

(ii) The second yearly anniversary date of the initial loan after the date of the agreement for monthly installment notes.

(2) For an eligible applicant buying a house out of inventory, a transferee eligible for interest credits who is assuming a loan made to a low- or moderate-income borrower which was initially approved on or after August 1, 1968, and for a transferee eligible for interest credits who is assuming a loan made to a low- or moderate-income borrower which was initially approved prior to August 1, 1968, provided the assumption is being made on new terms, interest credit assistance may be provided, at the time of loan closing on both the credit sale loan or loan being assumed and the subsequent loan.

(3) For a borrower who has an initial loan approved prior to August 1, 1968, interest credit assistance may be provided only on the subsequent loan.

4. *Interest credits for existing loans—(a) Review of outstanding interest credit agreements expiring during the current calendar year.* A new Interest Credit Agreement may be executed during the review period for a borrower whose Interest Credit Agreement is expiring provided:

(i) The borrower meets the eligibility requirements outlined in paragraph 3. of this Exhibit, except that:

(i) The amount of a borrower's net worth will not be considered unless the County Supervisor has knowledge that the family's net worth has increased sufficiently to enable him to graduate to other sources of credit.

(ii) For a family whose adjusted income exceeds the limit established for the State as indicated in Exhibit C of this Subpart:

(A) The amount of interest credit for which the family qualifies exceeds \$100 annually; and

(B) Their adjusted family income does not exceed the maximum moderate-income limit established for the State.

(iii) The provisions of paragraph 4.(a) (1) (ii) also apply to borrowers whose Interest Credit Agreements were previously terminated because their adjusted family incomes exceeded income limits for interest credits provided the borrower is experiencing difficulty in meeting payments due and requests further interest credit assistance.

(2) Current and accurate information is obtained about the borrower's family income. Verification of income from salary or wages will be obtained by using Form FmHA 410-5, "Request for Verification of Employment."

(3) None of the conditions outlined in paragraph 8. (a) of this Exhibit exist.

(b) *Substantial change during first year of Interest Credit Agreement.* The County Supervisor will not be responsible for checking to see if a substantial change has occurred. If, however, it comes to his attention that a borrower has had a substantial increase in income but less than that described in paragraph 9. (a) (4) of this Exhibit, the borrower's situation will be reviewed at the next review period and the Interest Credit Agreement canceled or, if the borrower is still eligible for interest credit in accordance with paragraph 4. (a) (1) (ii), a new agreement will be executed. For borrowers who have experienced a reduction in income as defined in paragraph 2. (d) of this Exhibit, a new agreement may be executed during the next review period if the borrower is experiencing difficulty in meeting payments due and requests that a new Interest Credit Agreement be authorized. When a new Interest Credit Agreement is processed because of substantial change as defined in paragraph 2. (d) of this Exhibit, the old agreement will be canceled as of December 31 for annual installment note borrowers and 1 day prior to the anniversary date of the initial loan for monthly installment note borrowers. For annual installment note borrowers, the new agreement will be effective on January 1. For monthly installment note borrowers, the new agreement will be effective on the anniversary date of the initial loan.

(c) *Use of interest credits in servicing loans.* Interest credits may be authorized by the State Director at any time when necessary to avoid liquidation of the loan, provided he determines that:

(1) The borrower is likely to repay the loan and correct any other defaults that may exist if interest credits are granted;

(2) The loan and borrower qualify for interest credits in accordance with the condi-

tions of paragraph 3. of this Exhibit for borrowers receiving an initial or subsequent loan; and

(3) In cases where a borrower's spouse has abandoned the family and no separation or divorce proceedings have been stated but his or her whereabouts has been unknown for at least 1 year, interest credits may be granted on the loan provided the remaining spouse is occupying the dwelling, owns a legal interest in the property and is liable for the unpaid RH debt; has had the RH loan account put in his or her name only, and is otherwise eligible for interest credits.

(d) *Interest credits for borrowers not presently receiving such assistance.* A borrower who is not now receiving interest credits because he is ineligible at the time of receiving his initial loan or because his agreement was canceled may be granted interest credits during the review period described in paragraph 2. (c) of this Exhibit if he is eligible for such assistance.

(e) *Other renewal of existing Interest Credit Agreements.* Renewals of Interest Credit Agreements may be authorized by the State Director when, for some reason beyond the control of the borrower or County Supervisor the processing of the agreement was not completed during the review period.

5. *Processing interest credits—(a) Preparation of Form FmHA 444-6 or 444-A6.* Form FmHA 444-6 or Form FmHA 444-A6 will be completed in accordance with guidelines for preparation of these forms available in all FmHA offices.

(b) *Effective period.* The Interest Credit Agreements for borrowers whose loans are made on the basis of monthly installments will be effective for 2 years from the date of loan closing. The Interest Credit Agreements for borrowers whose loans are made on the basis of annual installments will be effective through the second December 31 after the loan closing.

(c) *Submission of Interest Credit Agreement to the Finance Office.* The executed original of Form FmHA 444-6 should be submitted to the Finance Office immediately after the loan is closed and Form FmHA 444-A6 should be submitted not later than the date the review period for the existing Interest Credit Agreement expires.

(d) *Preparation of transaction record.* For borrowers who have an Interest Credit Agreement in effect, the following changes will be shown on Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrowers Transaction Record," when prepared by the Finance Office:

(1) *Interest rate field.* The interest rate field of the form will continue to show the interest rate on the note. The Finance Office will compute the effective interest rate charged the borrower based on the amount of interest credit granted. The computed rate, rounded to the nearest 1/8 of a percent, will be shown as a footnote on the form as "Interest Rate Reduced to ____%." Subsequent transactions will be applied by the Finance Office to the loan at the reduced interest rate until such time as renewal or cancellation occurs.

(2) *Daily interest accrual field.* The daily interest accrual will be shown at the reduced interest rate and interest will accrue at the same rate until such time as the agreement is renewed or canceled.

(3) *Application of credit field.* The initial transaction record form will not have an entry in the "application of credit" field. The Interest Credit Transaction Code for this method of processing interest credits will be 4 Z.

(4) *Payment status field.* The payment status field will not reflect the dollar amount of the interest credit granted.

(5) Minimum amount due by date shown field. The amount of the installment, reduced by the amount of interest credit granted as indicated on the Forms FmHA 444-5 or FmHA 444-A6, will be shown.

(e) *Advance from insurance fund.* The repayment schedule for advances made from the rural housing insurance fund will be computed at the interest rate shown on the Promissory Note. However, interest will accrue and payments will be applied on the amount advanced at the reduced interest rate in effect at time of payment.

6. *Processing interest credit renewals—(a) Finance Office actions.* At the beginning of the review period, the Finance Office will mail to the County Offices a list of borrowers whose Interest Credit Agreements are expiring, together with a package to be mailed by the County Supervisor to the borrowers. The package will contain the following:

(1) A letter of explanation and instructions for completing the Interest Credit Agreement (Exhibit E-2);

(2) Form FmHA 444-A6 (3 parts with carbon interleaved);

(3) Two Forms FmHA 410-5 (The County Office name and address will be preprinted in the space provided.); and

(4) Three window envelopes (to be used by the borrower in mailing Interest Credit Agreements to the County Offices and for the employer to mail the Verification of Employment forms to the County Office).

(b) *Form preparation.* The Interest Credit Agreement will have the following information preprinted by the computer:

(1) Borrower's name and address;

(2) County Office name and address;

(3) Borrower's case number;

(4) Amount of loan(s) and date of loan(s);

(5) Amount of annual or monthly installment at note interest rate;

(6) Amount of installment to show payment if the loan had been amortized at 1 percent interest rate; and

(7) Amount of the difference between installments at note interest rate and 1 percent rate.

(c) *Borrower responsibility.* Upon receipt of the package, the borrower will give one copy of the Verification of Employment form to the employer or employers of each member of the family who has income to be considered. A window envelope will be provided each employer to facilitate the mailing of the Verification of Employment form directly to the County Office. The borrower will also complete part 2 of the Interest Credit Agreement form (leaving carbon intact), sign the original form and mail the original and all copies to the County Office. After receiving the executed Interest Credit Agreement from the borrower and the Verification of Employment form from the employer, the County Supervisor will complete the Interest Credit Agreement and, if the borrower is eligible for interest credits, the County Supervisor will send the original of the Interest Credit Agreement to the Finance Office, retain one copy in the County Office, and return the other copy to the borrower. Borrowers not eligible to continue to receive interest credits will be notified and informed of the amount of their revised payments. A new Supplementary Payment Agreement will be obtained when needed.

(d) *Notice of interest credits not received.* Prior to the end of the review period, the Finance Office will send to the County Office a list of borrowers for whom a renewal Interest Credit Agreement has not been received. The County Office staff will place a checkmark in the appropriate column of the list to indicate those borrowers who are

no longer eligible for interest credits or whose agreement will not be renewed. A renewal Interest Credit Agreement for all other borrowers whose names appear on the list should be completed and mailed to the Finance Office by the end of the review period. The original of the completed list will be retained in the County Office and a copy returned to the Finance Office.

(e) *Processing Interest Credit Agreements not received during the review period.* Interest Credit Agreements not received during the appropriate review period will be processed by the Finance Office as follows:

(1) The effective date of the adjusted interest rate will be the date of the latest credit or charge to the account prior to the time the agreement is received or the effective date of the agreement, whichever is later. Loan account transactions processed prior to this effective date will not be reversed and reapplied.

(2) The monthly or annual installment will be increased or decreased by the amount of the interest credit granted.

(3) Transactions processed to the account subsequent to the effective date will be applied at the adjusted rate of interest.

7. *Interest credits on loans made to repair or rehabilitate a dwelling (Incentive Program).*

(a) *Incentive interest credits.* To encourage the repairing or rehabilitation of existing dwellings, an eligible applicant may receive interest credits to reduce the effective interest rate on section 502 RH loans made to repair or rehabilitate a dwelling already owned by the applicant provided the following conditions are met:

(1) The loan is approved after April 29, 1974;

(2) The dwelling is occupied or will be occupied by an eligible borrower after the loan is made;

(3) The amount of the loan may not exceed \$7,000 or be amortized for more than 25 years;

(4) The repair will be made to bring a substandard dwelling up to the minimum property standards for a section 502 RH loan; and

(5) The applicant's net worth, excluding the value of the site and dwelling being improved, household goods and the debts against them, does not exceed \$5,000 unless prior authorization is received from the State Director. In making such determinations, the State Director will consider the nature of assets such as a farm, business, etc., from which the applicant is dependent for a livelihood.

(b) *Interest rate.* Interest credits granted and the effective interest rate charged on loans made under this paragraph will be based on the applicant's adjusted family income as determined in accordance with § 1822.15(a) of this Subpart. All parts of Form FmHA 444-6, "Interest Credit Agreement," will be completed, except for the two interest credit computation blocks in section 3 of the form. The letters "RR" will be entered in the blank space immediately above the case number block on the form. The amount of interest credits granted and shown in section 4 of the Interest Credit Agreement will be the difference between the Promissory Note installment and the installment for the loan at the reduced interest rate. The reduced interest rate will be as follows:

(1) For applicants whose adjusted family income is not more than \$3,000, interest will be charged at the rate of 1 percent.

(2) For applicants whose adjusted family income is more than \$3,000 but not more than \$5,000, interest will be charged at the rate of 2 percent.

(3) For applicants whose adjusted family income is more than \$5,000 but not more than \$7,000, interest will be charged at the rate of 3 percent.

(c) *Limitations.* Borrowers qualifying for interest credit assistance under both paragraphs 3. and 7. of this Exhibit will be granted only the one type of interest credit assistance that is most beneficial to them. Interest credits on initial and subsequent loans will always be the same type. There is no provision for switching from one type of interest credit assistance to the other. Presently indebted section 502 RH borrowers who qualify may receive interest credits on subsequent loans for repair or rehabilitation even though the borrower may not now be receiving interest credit assistance.

(d) *Review of Interest Credit Agreements.* Interest Credit Agreements approved under this paragraph 7. will be reviewed during the same scheduled review period as for other Interest Credit Agreements. Renewal agreements will be completed in accordance with paragraph 7. (b) for those families who qualify for additional interest credit assistance.

(e) *Notation of Form FmHA 444-2, "Housing Fund Analysis."* The notation "8-RR" will be entered after line 1 in the "type of assistance" block on Form FmHA 444-2, for applicants who will receive interest credits under this authority.

8. *Improper Interest Credit Agreements.* Servicing actions under this paragraph will be taken when incorrect information provided by a borrower or an error by the County Supervisor or other FmHA employee resulted in the borrower receiving excessive interest credits of more than \$60 annually.

(a) *Determining improper interest credits.* Whenever there is a reason to believe that a borrower received more interest credit than he was entitled to because an improper Interest Credit Agreement may have been executed, the information on which the agreement was based will be verified immediately. A report on the case will be sent to the State Director. The State Director is responsible for taking the necessary action to correct improper interest credits subject to the following:

(1) If there is any indication of fraud or fiscal irregularity, he will refer the case to the Director of the Regional Office of Investigation for a determination as to whether it warrants an investigation. If the Regional Director determines that his office should investigate the case, Farmers Home Administration personnel will assist in any way requested.

(2) If the Regional Director determines that his office should not handle the investigation, he will inform the State Director of this decision. The State Director will then have a detailed review made by a member of his staff. He will review the findings and determine whether fraud or fiscal irregularities have occurred. If so, he will take the actions prescribed in § 1871.22 of this Chapter and other appropriate regulations.

(b) *Falsification or error by borrowers.* When an excessive interest credit has been granted because the borrower intentionally or otherwise provided incorrect information, the following actions will be taken:

(1) The State Director will request the Finance Office to cancel the Interest Credit Agreement as of the effective date of the current Form FmHA 444-6, "Interest Credit Agreement (Section 502 RH Loans)," or earlier FmHA 444-6 involved in the review or investigation. The Finance Office will then reapply any payments to the account at the note rate of interest or at the rate of the corrected Interest Credit Agreement and will notify the County Supervisor and borrower of any adjustment made in the account.

(2) The State Director will inform the borrower by certified mail (return receipt requested) of his findings and that the interest credit will be canceled. He also will inform him of any other action being taken or planned.

(3) Further handling of the case will be one of the following:

(i) If there is evidence of a criminal violation by the borrower, the case will be handled in accordance with § 1871.22(c) of this Chapter.

(ii) If the borrower's action appears to have been deliberate and a major error occurred, liquidation action may be warranted. Such actions may be taken, for example, if the information obtained indicates that the borrower was not eligible for an RH loan. Such a borrower would be asked to repay promptly the RH loan by refinancing or otherwise satisfy the account. In other cases, the borrower may already be in default and the fact that he had not correctly reported his income may justify liquidation of the loan. If immediate liquidation is likely to be detrimental to the financial interest of the Government, the State Director may arrange to have the borrower repay the loan in not more than 5 or 10 years, as appropriate, in accordance with § 1872.17(g) of this Chapter.

(iii) In all other cases, if the borrower cannot or will not reimburse the FmHA for the improper advance and immediate liquidation action is not warranted, the State Director may decide to continue with the loan. In such a case, he will cancel the amount of improper interest credit that we advanced. The amount of improper interest credit will be charged to the borrower's account and become immediately due and payable. The borrower must be advised by letter that he will be charged interest at the note rate on the amount until it is repaid.

(c) *Error by County Supervisor or other FmHA employee.* Where the borrower presented correct information and an FmHA employee erroneously granted the interest credit, the following actions will be taken:

(1) The State Director will request the Finance Office to cancel the Interest Credit Agreement as of the effective date of the current Form FmHA 444-6 or any earlier Form FmHA 444-6 involved in the review or investigation. The Finance Office will then reapply any payments made on the account during the period covered by the erroneous Interest Credit Agreement or agreements under review at the note rate of interest or at the rate of the corrected Interest Credit Agreement. The County Supervisor and borrower will be notified of adjustments made in the account.

(2) The County Supervisor will make a diligent effort to obtain restitution of the improperly advanced interest credit from the borrower. If this cannot be done, the County Supervisor will so inform the Finance Office by letter as soon as possible and in no case later than the end of the next interest credit review period for the loan. The Finance Office will then prepare Form FmHA 451-26, "Transaction Record," showing a loan schedule status adjustment for the improperly advanced interest credit. The borrower's account will be reported as current as of the last installment date unless the case is delinquent prior to the loan schedule status adjustment. The adjustment will only be for the amount of the improperly granted interest credit and other past due installments will continue to be reported as delinquent. The borrower will then repay the improperly advanced interest credits by increasing his monthly payment within his ability. The State Director will inform the borrower by letter that he will be charged interest at the note rate on this amount until it is repaid. A copy of such letter will be sent to the County Office.

(3) If, for any reason, the FmHA cannot continue with the loan, liquidation action will be promptly taken.

(d) *When the borrower is entitled to a lower amount of interest credit.* A corrected Interest Credit Agreement showing the proper amount of interest credit to which the borrower was entitled will be submitted to the Finance Office to replace the improper Interest Credit Agreement. The notation "corrected in accordance with Exhibit E of Subpart A of Part 1822" will be entered in the blank space next to the title line of the corrected Form FmHA 444-6. The improper Interest Credit Agreement will be canceled as of its effective date. Other cancellations of Interest Credit Agreements will be accomplished in accordance with paragraph 9., of this Exhibit.

9. Cancellation of existing Interest Credit Agreements.

(a) *Reasons for cancellation.* An existing Interest Credit Agreement will be canceled whenever:

(1) The borrower has never occupied the dwelling and the FmHA will not continue with the loan;

(2) The borrower ceases to occupy the dwelling;

(3) The borrower sells or conveys title to the property;

(4) The borrower has had a substantial increase in income and is clearly able to repay the loan without interest credits.

(b) *Effective date of cancellation.* The effective date of cancellation for paragraph 9. (a) (1) will be date of loan closing. The effective date of cancellation for paragraph 9. (a) (2), (3), and (4) will be the date on which the earliest action occurs which causes the cancellation. If the date cannot be determined, the date on which the County Supervisor became aware of the situation will be used. In cases where foreclosure action is being taken against a borrower and none of the conditions outlined in paragraph 9. (a) (1), (2), (3), and (4) exist, the Interest Credit Agreement will remain in effect until the final foreclosure action is completed. However, if the existing Interest Credit Agreement expires before foreclosure action is completed, further interest credits will not be granted.

(c) *Notification to the Finance Office.* The County Supervisor will determine the date of cancellation and notify the Finance Office on Form FmHA 444-15, "Interest Credit Agreement Cancellation." The Finance Office will process the cancellation and will accrue interest from the date of cancellation at the rate of interest shown in the Promissory Note. Prompt notification to the Finance Office, using Form FmHA 444-15, is extremely important as any transaction affecting the borrower's account subsequent to cancellation will be incorrect if cancellation action has not been completed by the Finance Office.

(d) *Notification to the Finance Office.* The County Supervisor will determine the date of cancellation and notify the Finance Office on Form FmHA 444-15, "Interest Credit Agreement Cancellation." The Finance Office will process the cancellation and will accrue interest from the date of cancellation at the rate of interest shown in the Promissory Note. Prompt notification to the Finance Office, using Form FmHA 444-15, is extremely important as any transaction affecting the borrower's account subsequent to cancellation will be incorrect if cancellation action has not been completed by the Finance Office.

EXHIBIT E-2—INTEREST CREDIT AGREEMENT RENEWAL

DEAR (FmHA Borrower): The Interest Credit Agreement you signed, reducing the effective interest rate on your Rural Housing loan, expires soon. In order to determine whether you are eligible to continue to receive a reduction in your housing loan payment, we will need information about:

1. Your income and the incomes of others living in your home.
2. The ages and relationship to you of others in the household.
3. The amount of real estate taxes paid by you on your home each year reduced by any tax exemptions available but not taken.
4. The amount of fire or hazard insurance you pay each year on your home.

This information must be provided promptly to the Farmers Home Administration by completing the enclosed Interest Credit Agreement and, when applicable, the enclosed Request for Verification of Employment should also be completed.

1. *Interest Credit Agreement:* This form must be completed correctly and fully. If you are self-employed or a farmer, contact the County Supervisor for an appointment so that he may assist you in providing the required information. Otherwise, provide complete information in section 2 of the agreement, sign the form in the space provided and send all copies of the form to the Farmers Home Administration County Office using one of the enclosed envelopes.

2. *Request For Verification of Employment:* If you are not self-employed or are not a farmer, you should have your employer complete this form. Furthermore, a form should be prepared for each member of your family who has reached the legal age of majority in the state and receives income from salary or wages. You and other employed members of your family should each complete items 1, 2 and 3 of a Request for Verification of Employment form, sign it in block 4 and send or give it, with one of the enclosed envelopes, to each employer with a request that the form be completed within 10 days and sent to the Farmers Home Administration County Office. To ensure that the form is returned to the County Office, you should place a stamp on the envelope before giving it to the employer. If more than two members of your family receive a salary, additional copies of the form should be obtained from the FmHA County Supervisor.

After the County Supervisor has received all of the required information, he will return a copy of the Interest Credit Agreement form to you. The agreement will show the amount of interest credit, if any, that will be credited to your loan account.

Failure to provide complete and accurate information or to return the forms promptly to the Farmers Home Administration may result in your not receiving additional interest credits and the payments on your loan being increased.

If you have any questions, contact the local County Supervisor immediately.

Effective date. This revision is effective December 30, 1974.

Dated: December 19, 1974.

FRANK B. ELLIOTT,

Administrator,

Farmers Home Administration.

[FR Doc. 74-30342 Filed 12-27-74; 4:45 am]

Title 14—Aeronautics and Space

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 13883; Amdt. SFAR 27-1]

PART 11—GENERAL RULEMAKING PROCEDURES

EPA FUEL VENTING EMISSION STANDARDS EFFECTIVE JANUARY 1, 1975

Compliance

Special Federal Aviation Regulation (SFAR) No. 27 is to require compliance with Environmental Protection Agency (EPA) fuel venting emission standards that are effective beginning January 1, 1975. These EPA standards, specified in 40 CFR Part 87, apply to new and in-use aircraft turbofan or turbojet engines of less than 8,000 pounds thrust, to new and in-use aircraft turbopropeller engines,

and to airplanes powered by those engines. The primary basis for this amendment is section 232 of the Clean Air Act, as amended. Editorial improvements are also made.

Notice No. 74-23 was published in the *FEDERAL REGISTER* on June 27, 1974 (39 FR 23271), stating that the Federal Aviation Administration was considering amending SFAR 27 to require compliance with certain EPA fuel venting emission standards made effective by that Agency on January 1, 1975. Interested persons were afforded an opportunity to participate in the proposed rule making. Due consideration was given to all relevant matter presented.

Five comments were received in response to the notice with two commentators objecting. One commentator stated that the proposed regulation would have no marked effect on the environment and was merely "regulation for regulation's sake." According to the commentator, the great majority of aircraft affected by the proposal are already in compliance with the proposed standards. In addition, the commentator objected to one of the means of complying with the regulation, that is, manually draining the fuel from a holding tank into a container. The commentator stated that this means of compliance did not control how the drained fuel is disposed of.

With respect to the environmental benefits of the substantive standards of EPA Part 87 that are added to SFAR 27 by this amendment, this factor was considered by EPA in its promulgation of Part 87. Regarding the ground handling of fuel after it is drained into a container, this issue involves airport fuel storage and ground fuel management practices that may justify future study. The FAA invites comments concerning the contribution of specific ground fuel handling practices to air quality deterioration, including suggestions concerning means of ensuring that drained fuels are not later evaporated into the atmosphere, thus defeating the intent of the fuel venting emissions regulations.

One commentator addressed the applicability of this amendment to foreign registered aircraft operated in the United States. This commentator stated that "unilateral regulations such as those proposed would be contrary to certain obligations assumed by the United States as a party to the Chicago Convention and to a number of bilateral air transport agreements." The commentator referred to § 1 of the SFAR which, pursuant to § 87.3 of EPA Part 87, provides that the SFAR "does not apply where inconsistent with an obligation assumed by the United States to a foreign country in a treaty, convention, or agreement." The commentator suggested that standards, such as those in this amendment, should be developed internationally through the International Civil Aviation Organization. The FAA agrees that it is most desirable that the introduction of standards affecting international civil aviation be accomplished in an orderly fashion through the develop-

ment of international standards. However, it is the position of the U.S. that no international treaties, conventions, or agreements currently prevent the FAA from exercising its duties under the Clean Air Act Amendments of 1970 and EPA Part 87. Therefore, SFAR 27, including this and subsequent amendments, must be applied to foreign airplanes as prescribed in section 1 of the SFAR.

In response to the fuel venting emissions provisions of EPA Part 87 that become effective on January 1, 1975 (namely Subpart B of EPA Part 87), this amendment adds definitions of "Class T1," and "Class P2" engines that are identical to those in § 87.1 of EPA Part 87, and adds references to those engine classes, and to the compliance date (January 1, 1975) in the appropriate sections of the SFAR.

Finally, editorial changes are made to the regulation. One editorial change restructures the paragraphs containing the references to the incorporated provisions of EPA Part 87 in order to standardize the form of those references where possible.

Another editorial change eliminates possible confusion concerning the effect of section 14(a) on the fuel venting emissions requirements of the SFAR. Section 14(a) states that compliance with the applicable fuel venting provisions "may be shown by any means of compliance, applied to the airframe or engine, that prevents * * *". However, the subsequent sections of the SFAR could be individually read as requiring that fuel venting emissions compliance must be shown for the engine (and may not be shown for the airframe alone). This is not intended. To ensure that there is no question that the required means of showing compliance with the applicable fuel venting emissions requirements may be applied to the airframe or engine, the words "airframe or engine" are added to the fuel venting emissions requirements. Consistent with this intent, the requirement in section 19 of the SFAR that fuel venting emissions requirements be met as a condition to the issuance of an airworthiness approval tag (FAA Form 8130-3) is deleted for two reasons: First, it is meaningless as a general requirement since section 14(a) provides that fuel venting emissions requirements need not be met by engines if airframe modifications show compliance. Second, it is redundant since, under section 25 of the SFAR, if the airframe does not comply with fuel venting emissions requirements, and the engine also does not comply, the airplane may not be operated. There is, thus, no need to apply the fuel venting emissions requirement at the engine airworthiness approval tag stage. Similarly, since, as stated above, the effect of section 14(a) is that an engine need not comply with any of the fuel venting emissions requirements of the SFAR if the airframe complies, and since airplane type certification approves the complete airplane (including its engines), the lead-in paragraphs of sections 15 and 17 (concerning the issuance of type certi-

ficates, amended type certificates and supplemental type certificates) have been revised to refer only to certification of the airplane. No substantive change in practice results from these changes to sections 15, 17, and 19 since they merely bring those sections into closer conformity with the intent of section 14(a), which already applies throughout the SFAR. Further notice and public procedure on these changes is, therefore, unnecessary.

As stated above, the requirements of 40 CFR Part 87 that are incorporated in this amendment become effective beginning on January 1, 1975. Section 232 of the Clean Air Act, as amended (42 U.S.C. 1857f-10) requires the Secretary of Transportation to prescribe regulations to insure compliance with all standards prescribed under § 231 of that Act (42 U.S.C. 1857f-9), which include the newly incorporated provisions of Part 87. Accordingly, this amendment must be effective no later than January 1, 1975. Good cause, therefore, exists for making this amendment effective in less than 30 days after publication in the *FEDERAL REGISTER*.

(Sec. 232, Clean Air Act, as amended December 31, 1970, Pub. L. 91-604 (42 U.S.C. 1857f-10), as delegated (36 FR 8733); 40 CFR Part 87 (39 FR 19088); secs. 307(c), 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1348(c), 1354(a), 1421, and 1423; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

In consideration of the foregoing, SFAR 27 is amended, effective January 1, 1975, as follows:

1. Section 13 is amended by adding the following new paragraphs (a) (6) and (a) (7).

Section 13 Engine classes and test conditions. (a) * * *

(6) "Class T1" means all aircraft turbofan or turbojet engines (except engines of Class T5) of rated power less than 8,000 pounds thrust.

(7) "Class P2" means all aircraft turbo-prop engines.

* * * * *

2. Section 14(a) is amended by inserting the words "and beginning on January 1, 1975" after the words "February 1, 1974."

3. Section 15 is amended to read as follows:

Section 15 Type certificates. Notwithstanding Part 21 of the Federal Aviation Regulations and irrespective of the date of application, no type certificate is issued, on and after the dates specified in paragraphs (a) through (c) of this section, for the airplanes specified therein, unless—

(a) For airplanes powered by engines of Class T2, Class T3, Class T4, or Class T5, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974;

(b) For airplanes powered by engines of Class T4, each engine complies with the exhaust emission requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974; and

(c) For airplanes powered by engines of Class T1 or Class P2, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40

CFR Part 87 that apply beginning January 1, 1975.

4. Section 17 is amended to read as follows:

Section 17 Supplemental or amended type certificates. Notwithstanding Part 21 of the Federal Aviation Regulations and irrespective of date of application, no supplemental or amended type certificate is issued, on and after the date specified in paragraphs (a) through (c) of this section, for the airplanes specified therein, unless—

(a) For airplanes powered by engines of Class T2, Class T3, Class T4, or Class T5, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974;

(b) For airplanes powered by engines of Class T4, each engine complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974; and

(c) For airplanes powered by engines of Class T1 or Class P2, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1975.

5. Section 19 is amended to read as follows:

Section 19 Airworthiness approval tags. Notwithstanding Part 21 of the Federal Aviation Regulations, no airworthiness approval tag (FAA Form 8130-3) is issued on and after February 1, 1974, for an engine of Class T4 unless the engine complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974.

6. Section 21 is amended to read as follows:

Section 21 Standard airworthiness certificates. Notwithstanding Part 21 of the Federal Aviation Regulations and irrespective of the date of application, no standard airworthiness certificate is issued, on and after the dates specified in paragraph (a) through (c) of this section, for the airplanes specified therein, unless—

(a) For airplanes powered by engines of Class T2, Class T3, Class T4, or Class T5, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974;

(b) For airplanes powered by engines of Class T4, each engine complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974; and

(c) For airplanes powered by engines of Class T1 or Class P2, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1975.

7. Paragraph (a) of § 25 is amended to read as follows:

Section 25 Operation. On and after the dates specified in paragraphs (a) through (c) of this section, no person may, within the United States, operate an airplane specified in those paragraphs unless—

(a) For airplanes powered by engines of Class T2, Class T3, Class T4, or Class T5, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974;

(b) For airplanes powered by engines of Class T4, each engine complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning February 1, 1974; and

(c) For airplanes powered by engines of Class T1 or Class P2, the airframe or engine complies with the fuel venting emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1975.

Issued in Washington, D.C., on December 23, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.74-30361 Filed 12-27-74; 8:45 am]

[Docket No. 74-EA-81; Amdt. 39-2057]

PART 39—AIRWORTHINESS DIRECTIVE Fairchild Aircraft

The Federal Aviation Administration is amending section 39.13 of Part 39 of the Federal Aviation Regulations so as to amend, revise and redesignate AD 73-20-1 applicable to Fairchild F-27 and FH-227 type airplanes.

Since the promulgation of AD 73-20-1, it has appeared that some of the affected airplanes are in storage, with the possibility of their reactivation in air commerce. Since the deficiency is one of corrosion which is correlated to time, the AD is being amended to include a calendar time criterion for the inspection. The airworthiness directive is also being revised to present the substance in a clearer manner.

In view of the foregoing and because the deficiency is one which affects air safety, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] section 39.13 of Part 39 of the Federal Aviation Regulations is amended by amending, revising and redesignating AD 73-20-1 as follows:

Fairchild. Applies to all Fairchild F-27 and FH-227 Type Aircraft Certified in all categories.

Compliance required as indicated:

1. Affects front and rear horizontal stabilizer spar fittings, P/N's 27-213003-11, -12 and 27-213002-11 which have accumulated 2500 hours or more in service.

a. Within the next 30 days unless accomplished within the last 11 months, inspect stabilizer spar fittings in accordance with Section 2 of Fairchild Service Bulletins F-27-55-21 and FH-227-55-12, or inspect in accordance with an approved equivalent procedure.

b. The inspections specified in "a" above, shall be repeated at intervals not to exceed 12 calendar months or 2500 hours in service from the last inspection, whichever occurs first.

2. Corroded or cracked parts shall be replaced prior to further flight.

a. Parts replacement shall be in accordance with Section 2 of Fairchild Service Bulletins F-27-55-21 and FH-227-55-12, and shall be of the same part number or approved equivalent parts.

3. The aircraft may be flown in accordance with FAR 21.197 to a base where the inspections or repairs can be performed.

4. Upon submission of substantiating data by an owner or operator through an FAA

Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection interval specified in this AD. Equivalent inspections or parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.
(Fairchild Service Bulletins F-27-55-21 and FH-227-55-12 pertain to this subject.)

This amendment is effective December 31, 1974.

This amendment is made under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 and 1423], and section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Jamaica, N.Y., on December 17, 1974.

JAMES BISPO,
Deputy Director,
Eastern Region.

[FR Doc.74-30304 Filed 12-27-74; 8:45 am]

[Airspace Docket No. 74-SW-32]

PART 73—SPECIAL USE AIRSPACE Alteration of Restricted Area

On October 15, 1974, a Notice of Proposed Rule Making (NPRM) was published in the FEDERAL REGISTER (39 FR 36863) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Administration that would change the time designation of R-3803, Fort Polk, La., to continuous.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 GMT, February 27, 1975, as hereinafter set forth.

In § 73.38 (40 FR 676) the description of the time of designation for R-3803 Fort Polk, La., is changed from "continuous from June 1 through August 31; other times as activated by NOTAM issued by the using agency at least 24 hours in advance." to "Continuous."

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C. on December 23, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air
Traffic Rules Division.

[FR Doc.74-30308 Filed 12-27-74; 8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-892, Amdt. 28]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Amendment To Reduce Reporting Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. December 17, 1974.

By ER-863, adopted May 20, 1974, the Board amended Part 298 of its Economic Regulations to require, inter alia, all air taxi operators—including commuter air carriers—to report annual data with respect to their overall revenue operations on a new prescribed CAB Form 298-D.

In adopting this rule, the Board indicated that the regulatory basis for the somewhat expanded quarterly reporting of statistical data by commuter air carriers and for the new annual reporting requirements by all air taxis was based partly on the needs of the National Transportation Safety Board (NTSB) and partly on the Board's own needs in fulfilling our respective regulatory responsibilities.

To the extent that the Board at that time rejected comments urging that helicopter operations be excluded from the annual reporting requirements imposed on air taxis, our action reflected deference to the regulatory needs of NTSB, which had made no distinction between fixed-wing and rotary-wing operations in requesting the Board to obtain the data. We believed that, instead of completely excluding data as to rotary-wing operations, we could better accommodate the apparent needs of NTSB by advising concerned air taxis of our readiness to grant individual waivers upon a showing of particular hardship in reporting such operations.

Since the Adoption of ER-863, the Board's Bureau of Accounts and Statistics has received numerous letters from air taxi operators requesting such waivers. In support of these requests, the air taxi operators argue that the peculiarities of rotary-wing operations make it extremely difficult and burdensome to compute data pertinent to a Form 298-D report. These operations sometimes consist of many landings and takeoffs each day, including flights of only a few minutes' duration, and frequently involve flights of external load type carrying a variety of cargo and weights. It is also contended that, even if rotary-wing statistics could be readily compiled, they would be of dubious value since they would provide no meaningful comparison with other "demand-type" operations.

In light of these numerous requests, we have consulted with NTSB in considering whether to amend the rule itself, rather than to rely on individual hardship waiver procedures, in order to exclude reports on rotary-wing air taxi operations. NTSB has now advised us that its need for these data is not so great as to justify the demonstrated widespread burden which their reporting entails for air taxi operators. Accordingly, since we continue to perceive no adequate need of our own to require the inclusion of rotary-wing operations we have determined to exclude these operations from those required to be reported in the annual reports of air taxis on CAB Form 298-D.

We have also taken this occasion to reexamine our need for data related to all-cargo flights of air taxis, which are encompassed by the present rule's coverage of "all" revenue operations. Similarly, we have requested NTSB to

reexamine its regulatory need for these data. Since we have concluded that the Board has no adequate need for these data and NTSB has advised us that it is primarily concerned with passenger operations so that it has no objection to the elimination of all-cargo reporting by air taxis, we are excluding such operations from those required to be reported annually on CAB Form 298-D.

To reflect the foregoing, appropriate changes are also being made to CAB Form 298-D itself.

In addition to the amendments which we are hereby making to the rule and the reporting form, we also take this opportunity to provide certain clarifications of reporting requirements imposed by ER-863, in response to various inquiries which we have received.

1. *Fuel Stops.* The regulation and the instructions for reporting on CAB Form 298-D are not intended to treat fuel stops as traffic stops. Thus, for example, an air taxi operator carrying three passengers from A to C with a fuel stop at B would report only three passengers carried and one departure performed.

2. *Passenger Travels One Way but Pays for Contracted Round Trip.* It appears to be a common practice for charterers of air taxis requiring only one-way transportation, to pay a round-trip charge which includes payment for the empty aircraft's return flight to the point of origin. In this case, both legs of the flight should be reported, since both are revenue-producing, but the number of passengers carried is only the number carried one way. Thus, for example, a passenger traveling from A to B, but paying for the contracted rate A to B to A, would be reported as follows:

- Item 1. Number of Passengers Carried—1.
- Item 2. Aircraft Hours Flown—(Hours from A to B and B to A).
- Item 3. Aircraft Miles Flown—(Miles from A to B and B to A).
- Item 4. Number of Departures Performed—2.

3. *Reporting by Commuter Air Carriers on CAB Form 298-D.* There is an apparent misunderstanding by some commuter air carriers as to whether or not they are to include, as "revenue operations" reported annually on CAB Form 298-D, the scheduled revenue operations which they are required to report quarterly on CAB Form 298-C. As indicated in § 298.67(c), the data to be reported on Form 298-D by commuter air carriers, as well as all other air taxi operators, include both scheduled and nonscheduled revenue operations.

Since the within amendment reduces reporting requirements, and thereby relieves a burden, the Civil Aeronautics Board finds that notice and public procedure hereon are not required and that the rule may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298), effective December 31, 1974, as follows:

1. Amend paragraph (a) of § 298.67, the revised paragraph to read as follows:

§ 298.67 Reporting instructions.

(a) Each air taxi operator (including commuter air carriers) shall file CAB Form 298-D,¹ entitled "Report of All Revenue Operations (Excluding Rotary-Wing and All-Cargo Operations)" Performed by Air Taxi Operators, Including Commuter Air Carriers," in accordance with the provisions of this Part and in the manner set forth in said form which is made a part hereof and annexed hereto.

2. To reflect its revised title in § 298.67(a), as amended herein, amend CAB Form 298-D,¹ as attached hereto and made a part hereof.

(Secs. 204(a) and 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 766; (49 U.S.C. 1324 and 1377.))

By the Civil Aeronautics Board.

Effective: December 31, 1974.

Adopted: December 17, 1974.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-30364 Filed 12-27-74; 8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[FRL 313-8]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

BENZENE HEXACHLORIDE; REVOCATION

An order was published in the FEDERAL REGISTER of September 28, 1973 (38 FR 27046), in response to Food Additive Petition No. 4H5042, establishing an interim tolerance of 7 parts per million for residues of the insecticide BHC (benzene hexachloride) in imported paprika. This interim tolerance expires December 31, 1974.

The Reorganization Plan No. 3 of 1970, published in the FEDERAL REGISTER of October 6, 1970 (35 FR 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346, 346a, and 348).

Therefore, pursuant to provisions of the act (sec. 409(h), 72 Stat. 1788; 21 U.S.C. 348(h)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), Part 121 is amended by revoking § 121.1255 BHC.

§ 121.1255 [Revoked]

Since this revocation is merely affirmatory and is noncontroversial in nature, notice and public procedure are not prerequisites to the promulgation of this order.

¹ CAB Form 298-D filed as part of original document.

Effective date. This order shall become effective on December 31, 1974.

(Sec. 409(h), 72 Stat. 1788; (21 U.S.C. 348 (h)))

Dated: December 20, 1974.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.74-30330 Filed 12-27-74;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

SUBCHAPTER C—DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Robenidine Hydrochloride With Roxarsone

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (95-546V) filed by

American Cyanamid Co., Princeton, NJ 08540, proposing the safe and effective use of robenidine hydrochloride with additional levels of roxarsone in medicated broiler and fryer feeds. This application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. In Part 121, § 121.262(c) is amended in item 1.24 in table 1 by revising the "Grams per ton" entry in the second column to read as follows:

§ 121.262 3-nitro-4-hydroxyphenylarsonic acid.

(c) * * *

TABLE 1.—3-Nitro-4-Hydroxyphenylarsonic Acid In Complete Chicken and Turkey Feed

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
1.24 3-Nitro-4-hydroxyphenylarsonic acid (roxarsone).	22.5-45.4 (0.0025-0.005 percent).	Robenidine hydrochloride.	30 (0.0033 percent).	For broiler or fryer chickens only; do not feed to layers; feed continuously as the sole ration; withdraw 5 days prior to slaughter; use as sole source of organic arsenic; roxarsone provided by sponsor No. 631; see § 135.501 (e) of this chapter.	As an aid in the prevention of coccidiosis caused by <i>Eimeria mitis</i> , <i>E. brunetti</i> , <i>E. tenella</i> , <i>E. acervulina</i> , <i>E. maxima</i> , and <i>E. necatrix</i> , and increased rate of weight gain.

2. In Part 135e, § 135e.66(f) is amended in item 2 of the table by revising the entry in the fourth column, "Grams per ton," to read as follows:

§ 135e.66 Robenidine hydrochloride.

(f) * * *

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
2. Robenidine hydrochloride.	30 (0.0033 percent)	Roxarsone (3-nitro-4-hydroxyphenylarsonic acid).	22.5-45.4 (0.0025-0.005 percent)	For broiler or fryer chickens only; do not feed to layers; feed continuously as the sole ration; withdraw 5 days prior to slaughter; use as sole source of organic arsenic; roxarsone provided by sponsor No. 631; see § 135.501 (e) of this chapter.	As an aid in the prevention of coccidiosis caused by <i>Eimeria mitis</i> , <i>E. brunetti</i> , <i>E. tenella</i> , <i>E. acervulina</i> , <i>E. maxima</i> , and <i>E. necatrix</i> , and increased rate of weight gain.

Effective date. This order shall be effective on December 30, 1974.

(Sec. 512(i), 82 Stat. 347; (21 U.S.C. 360b (i)))

Dated: December 20, 1974.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.74-30333 Filed 12-27-74;8:45 am]

Title 30—Mineral Resources

CHAPTER I—MINING ENFORCEMENT AND SAFETY ADMINISTRATION, DEPARTMENT OF THE INTERIOR

PART 11—RESPIRATORY PROTECTIVE DEVICES; TESTS FOR PERMISSIBILITY; FEES

Respiratory Protection Against Exposure to Vinyl Chloride

The Secretary of the Interior, through the Mining Enforcement and Safety Administration, and the Secretary of Health, Education, and Welfare, through the National Institute for Occupational Safety and Health, conduct a testing and approval program for respirators used in occupationally hazardous atmospheres pursuant to regulation contained in this part.

On October 4, 1974, the Occupational Safety and Health Administration, following a public hearing on the matter, promulgated a standard for the control of employee exposure to vinyl chloride. The standard provides that respiratory protection shall be provided at the request of employees exposed to 25 ppm or less vinyl chloride and requires that respirators shall be selected from those approved under Part 11. Specifically, the standard requires, among other things, that where the atmospheric concentration of vinyl chloride is not over 25 ppm, any gas mask with front- or back-mounted canister or powered air-purifying respirator with canister which provides a service life of at least four hours may be used, and where the concentration is not over 10 ppm, any chemical cartridge respirator with an organic vapor cartridge which provides a service life of at least one hour may be used. The standard further requires a program to assure timely replacement of canisters or cartridges.

The purpose of the amendments set forth below is to establish special procedures for testing vinyl chloride respirators and to adopt a requirement that any canister or cartridge used to protect employees against exposure to vinyl chloride, have an end-of-service-life indicator. Unlike many other gases, vinyl chloride has no inherent warning properties. Where a gas has an odor and

where a canister or cartridge is nearing or is at the end of its useful life, the worker is aware because he can smell the gas. Vinyl chloride is odorless and colorless. Thus, with due regard for the wearer's health, any cartridge or canister should possess an end-of-service-life indicator. Section 11.205 provides that after June 30, 1975, each canister or cartridge submitted for approval must have an end-of-service-life indicator. The delay in this requirement is to give the Institute an opportunity to test the effectiveness of the indicators. Section 11.205 further provides that after December 31, 1975—when respiratory protection at 25 ppm or less becomes mandatory—respirators without an end-of-service-life indicator will not be considered approved for use by employees exposed to vinyl chloride. There is no delay in the effective date for the special tests adopted for vinyl chloride respirators.

Since it is essential that there are available approved respiratory devices for protection against exposure to vinyl chloride the Departments find that good cause exists for omitting notice of proposed amendments to Part II. Accordingly, these amendments, as set forth below, will be effective on December 30, 1974.

Dated: December 24, 1974.

JACK W. CARLSON,
Secretary
of the Interior.

Dated: December 10, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education,
and Welfare.

In Part II a new Subpart N for special use respirators is established and Sections 11.200–11.208 applicable to vinyl chloride respirators are added to read as follows:

Subpart N—Special Use Respirators

Sec.	
11.200	Vinyl chloride respirators; description.
11.201	Required components.
11.202	Gas masks; requirements and tests.
11.203	Chemical-cartridge respirators; requirements and tests.
11.204	Powered air-purifying respirators; requirements and tests.
11.205	Requirements for end-of-service-life indicator.
11.206	Quality control requirements.
11.207	Labeling requirements.
11.208	Fees.

AUTHORITY: Secs. 202(h), 204, 508, 83 Stat. 763, 764, 803 (30 U.S.C. 842(h), 844, 957); secs. 2, 3, 5, 36 Stat. 370, as amended 37 Stat. 681 (30 U.S.C. 3, 5, 7); sec. 8(g), 84 Stat. 1600 (29 U.S.C. 667(g)).

§ 11.200 Vinyl chloride respirators; description.

Vinyl chloride respirators, including all completely assembled respirators which are designed for use as respiratory protection during entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life, are described according to their construction as follows:

- (a) Front-mounted or back-mounted gas masks;
- (b) Chin-style gas masks;
- (c) Chemical-cartridge respirators;
- (d) Powered air-purifying respirators; and,
- (e) Other devices, including combination respirators.

11.201 Required components.

(a) Each vinyl chloride respirator described in 11.200 shall, where its design requires, contain the following component parts:

- (1) Facepiece;
- (2) Canister with end-of-service-life indicator;
- (3) Cartridge with end-of-service-life indicator;
- (4) Harness;
- (5) Attached blower; and,
- (6) Breathing tube.

(b) The components of each vinyl chloride respirator shall meet the minimum construction requirements set forth in Subpart G of this part.

§ 11.202 Gas masks; requirements and tests.

(a) Except for the tests prescribed in 11.102–5, the minimum requirements and performance tests for gas masks, prescribed in Subpart I of this part, are applicable to vinyl chloride gas masks.

(b) The following bench tests are applicable to canisters designed for use with gas masks for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Four canisters will be equilibrated at $25 \pm 5^\circ \text{C}$ by passing 85 ± 5 percent relative humidity air through them at 64 liters per minute for six hours.

(2) The equilibrated canisters will be resealed, kept in an upright position at room temperature, and tested according to subparagraph (3) of this paragraph within 18 hours.

(3) The canisters equilibrated and stored as described in subparagraphs (1) and (2) of this paragraph will be tested on an apparatus that allows the test atmosphere at 85 ± 5 percent relative humidity and $25 \pm 5^\circ \text{C}$ to enter the canister continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 64 liters per minute.

(4) The maximum allowable penetration after six hours of testing according to subparagraph (3) of this paragraph shall not exceed 1 ppm vinyl chloride.

(c) Where canisters are submitted for testing and approval with a service life of more than four hours, the period of time for testing for vinyl chloride penetration will be performed at 150% of the service life specified in the manufacturer's application. Example: If a manufacturer requests approval of a respirator for six hours use against exposure to vinyl chloride, the maximum allowable penetration after nine hours of testing shall not exceed 1 ppm vinyl chloride.

11.203 Chemical-cartridge respirators; requirements and tests.

(a) Except for the tests prescribed in 11.162–8, the minimum requirements

and performance tests for chemical-cartridge respirators prescribed in Subpart L of this part are applicable to vinyl chloride chemical-cartridge respirators.

(b) The following bench tests are applicable to cartridges designed for use with chemical-cartridge respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Where two cartridges are used in parallel on a chemical-cartridge respirator, the bench test requirements will apply to the combination rather than the individual cartridges.

(2) Four cartridges or pairs of cartridges will be equilibrated at $25 \pm 5^\circ \text{C}$ by passing 85 ± 5 percent relative humidity air through them at 25 liters per minute for six hours.

(3) The equilibrated cartridges will be resealed, kept in an upright position, at room temperature, and tested according to subparagraph (4) of this paragraph within 18 hours.

(4) The cartridges equilibrated and stored as described in subparagraphs (1), (2), and (3) of this paragraph will be tested on an apparatus that allows the test atmosphere at 85 ± 5 percent relative humidity and $25 \pm 5^\circ \text{C}$ to enter the cartridges or pairs of cartridges continuously at a concentration of 10 ppm vinyl chloride monomer at a total flow rate of 64 liters per minute.

(5) The maximum allowable penetration after two hours of testing according to subparagraph (4) of this paragraph shall not exceed 1 ppm vinyl chloride.

11.204 Powered air-purifying respirators; requirements and tests.

(a) Except for the tests prescribed in 11.162–8, the minimum requirements and performance tests for powered air-purifying respirators prescribed in Subpart L of this part are applicable to vinyl chloride powered air-purifying respirators.

(b) The following bench tests are applicable to cartridges designed for use with powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life.

(1) Four cartridges will be equilibrated at $25 \pm 5^\circ \text{C}$ by passing 85 ± 5 percent relative humidity air through them at 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets, for six hours.

(2) The equilibrated cartridges will be resealed, kept in an upright position at room temperature and tested according to subparagraph (3) of this paragraph within 18 hours.

(3) The cartridges equilibrated and stored as described in subparagraphs (1) and (2) of this paragraph will be tested on an apparatus that allows the test atmosphere at 85 ± 5 percent relative humidity and $25 \pm 5^\circ \text{C}$ to enter the cartridge continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets.

(4) The maximum allowable penetration after six hours of testing according to subparagraph (3) of this paragraph shall not exceed 1 ppm vinyl chloride.

§ 11.205 Requirements for end-of-service-life indicator.

(a) After June 30, 1975, each canister or cartridge submitted for testing and approval in accordance with §§ 11.202, and 11.203, and 11.204 shall be equipped with a canister or cartridge end-of-service-life indicator which shows a satisfactory indicator change or other obvious warning before 1 ppm vinyl chloride penetration occurs. The indicator shall show such change or afford such warning at 80±10 percent of the total service life to 1 ppm leakage, as determined by continuing each test described in paragraphs (b) of each of §§ 11.202, 11.203, and 11.204 of this Subpart until a 1 ppm leakage of vinyl chloride occurs. After December 31, 1975, a cartridge or canister without an end-of-service-life indicator will not be considered approved for use by employees exposed to vinyl chloride.

(b) The applicant shall provide sufficient pretest data to verify the performance of the end-of-service-life indicator required in paragraph (a) of this Section.

§ 11.206 Quality control requirements.

(a) In addition to the construction and performance requirements specified in Sections 11.201, 11.202, 11.203, 11.204, and 11.205 of this Subpart, the quality control requirements in paragraphs (b), (c), and (d) of this section apply to approval of gas masks, chemical cartridge respirators, and powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life.

(b) The respirators submitted for approval as described in paragraph (a) of this Section shall be accompanied by a complete quality control plan meeting the requirements of Subpart E of this Part.

(c) The applicant shall specify in the plan that a sufficient number of samples will be drawn from each bulk container of sorbent material and that where activated carbon is used, the following specific tests will be performed:

1. Apparent density,
2. Iodine number,
3. Moisture content,
4. Carbon tetrachloride number, and,
5. Mesh size.

Such tests shall be performed in a quantity necessary to assure continued satisfactory conformance of the canisters and cartridges to the requirements of this Subpart.

(d) Final performance quality control tests on the complete canisters and cartridges shall be accomplished using the bench tests and procedures prescribed in §§ 11.202, 11.203, 11.204, and 11.205 of this Subpart.

11.207 Labeling requirements.

A warning shall be placed on the label of each gas mask, chemical-cartridge

respirator, and powered air-purifying respirator, and on the label of each canister and cartridge, alerting the wearer to the need for a fitting test in accordance with the manufacturer's facepiece fitting instructions, providing service life information, providing specific instructions for disposal, and advising that the wearer may communicate to NIOSH any difficulties that may be experienced in the design and performance of any gas mask, chemical-cartridge respirator, or powered air-purifying respirator approved under the requirements of this Subpart. The service lives of respirators meeting the test requirements of this Subpart shall be specified as follows:

- | | |
|---------------------------------------|---------|
| (a) Chemical-cartridge respirator. | 1 hour |
| (b) Gas mask | 4 hours |
| (c) Powered air-purifying respirator. | 4 hours |

(d) Where the service life of a respirator is approved for more than four hours, the service life for which the respirator has been approved will be specified.

11.208 Fees.

The following fees shall be charged for the examination, inspection, and testing of complete assemblies and components of respirators described in §§ 11.200 and 11.201 of this Subpart.

- | | |
|--|---------|
| (a) Complete gas mask | \$1,100 |
| (b) Complete chemical-cartridge respirator. | 1,150 |
| (c) Complete powered air-purifying respirator. | 1,500 |
| (d) Canister or cartridge only. | 750 |

[FR Doc.74-30352 Filed 12-27-74; 8:45 am]

CHAPTER II—GEOLOGICAL SURVEY

PART 250—OIL AND GAS AND SULPHUR

Operation in the Outer Continental Shelf Helicopter Refueling Facilities

On April 15, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 13551) which proposed to amend § 259.19(a) of the Outer Continental Shelf Operating Regulations. The proposed amendment provided that the Area Oil and Gas Supervisor of the Geological Survey could require that oil and gas lessees on the Outer Continental Shelf provide the use of helicopter refueling sites maintained on platforms, fixed structures or artificial islands for helicopters employed by the Department of the Interior in connection with OCS lease management activities.

After reviewing all the comments received, it was decided that the intent of the amendment needed clarification on two items. First, it was not intended that offshore helicopter refueling sites would be required to be constructed solely for the use of helicopters employed by the Department of the Interior, but that any established refueling site would be accessible to helicopters used by the Department of the Interior during the inspection of OCS operations. Second, it is not intended that expenses incurred by

the lessee as a result of the Government's use of the refueling site not be reimbursed. As a result, § 250.19(a) is revised to reflect these changes.

Effective date: This amendment shall be effective January 1, 1975.

Dated: December 23, 1974.

C. K. MALLORY,
Deputy Assistant Secretary
of the Interior.

Paragraph (a) of § 250.19 is revised to read as follows:

§ 250.19 Platforms and pipelines.

(a) The supervisor is authorized to approve the design, other features, and plan of installation of all platforms, fixed structures, and artificial islands as a condition of the granting of a right of use or easement under paragraphs (a) and (b) of § 250.18 or authorized under any lease issued or maintained under the act. The Supervisor is authorized to require that lessees maintaining existing platforms, fixed structures and artificial islands equipped with helicopter landing sites and refueling facilities provide the use of such facilities for helicopters employed by the Department of the Interior in inspection operations on the Outer Continental Shelf. The Supervisor is further authorized, in approving the design of any new platform, fixed structure, or artificial island which includes a helicopter landing site and refueling facilities to require that the lessee provide the use of such facilities for helicopters employed by the Department of the Interior in inspection operations on the Outer Continental Shelf. As determined by the Supervisor, the lessee shall be reimbursed for reasonable costs incurred in connection with the use of such facilities by helicopters employed by the Department.

[FR Doc.74-30291 Filed 12-27-74; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL-313-7]

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Review of Indirect Sources

On February 25, 1974 (39 FR 7270), the Administrator of the Environmental Protection Agency (EPA) promulgated an indirect source review regulation (40 CFR 52.22(b)) to be incorporated into the Clean Air Act implementation plans for 52 states and territories. The regulation was promulgated with clarifying amendments on July 9, 1974 (39 FR 25292). As currently promulgated, the regulation requires affected facilities which commence construction after December 31, 1974 to secure a permit from EPA before proceeding with construction. 40 CFR 52.22(b)(3). The regulation has been effective for purposes of processing applications since July 1, 1974.

The Administrator is today suspending implementation of the review procedures under the regulation pending further notice. No facility which commences construction or modification prior to July 1, 1975 will be subject to the Federal indirect source regulation. Certain other questions relating to the regulation are now being reviewed by EPA. EPA expects to formulate its plans and make its intentions known on these matters within the next few weeks.

This suspension will have no effect on the applicability or validity of existing state indirect source laws or regulations, nor will it affect state indirect source

laws or regulations which may be adopted hereafter, whether or not submitted to EPA for approval.

(Sections 110(a)(2)(B), 110(c) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857c-5(a)(2)(B), 1857c-5(c), and 1857g(a)).

Dated: December 23, 1974.

RUSSELL E. TRAIN,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended by adding the following new paragraph (b)(16) to § 52.22:

§ 52.22 Maintenance of standards.

(b) *Regulation for review of new or modified indirect sources.* * * *

(16) Notwithstanding the provisions of any other portion of this paragraph to the contrary, implementation of the review procedures under this paragraph is hereby suspended pending further notice. No owner or operator of an indirect source for which construction or modification commences prior to July 1, 1975 shall be subject to the requirements of this paragraph.

[FR Doc.74-30329 Filed 12-27-74; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 1780, 4110]

ADVISORY BOARDS

Establishment and Composition Guidelines

The purpose of this amendment is to provide additional regulations to implement the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. I (1970)) through guidelines for the establishment and composition of advisory boards created to advise the Director, State Directors, and District Managers of the Bureau of Land Management on matters pertaining to resources and uses of the public lands under the jurisdiction of the Bureau of Land Management. This proposal supplements rules dealing with advisory boards published in the FEDERAL REGISTER on October 4, 1974. Both proposals would amend Group 1700 of Chapter II, Title 43 of the Code of Federal Regulations.

The proposed amendment would permit creation of a tri-level system of National, State or regional, and district multiple-use advisory boards to replace the present advisory board system which will terminate January 5, 1975, under the terms of section 14(a) (1) of the Federal Advisory Committee Act.

The proposed regulations do not prescribe the specific composition of State and district advisory boards. Subject to the requirements of the Federal Advisory Committee Act and these regulations, the composition of these boards would be determined on an individual basis during the development of the board charters required by Section 9(c) of the Federal Advisory Committee Act. This would permit balancing of the membership of State and district boards, at the time of chartering, to reflect the extent, intensity, and interaction of the various programs in each State or district. Under the Federal Advisory Committee Act, all advisory boards must be reviewed biennially to determine their future. Board charters are also re-examined at this time.

This proposal would also change the manner in which grazing applications are handled. All applications would no longer be routinely considered by the district advisory board. However, under this proposal, District Multiple Use Boards could be called upon by District Managers for advice and recommendations concerning protests to proposed adverse decisions on grazing applications.

The principal changes from the present advisory system are outlined below:

National Advisory Board Council is being carried forward without change from the restructure completed in De-

cember 1973, except for a procedural change in the appointment of members other than livestock and wildlife members, and a shortening of the name to "National Advisory Board."

State Multiple Use Boards are currently composed of two livestock members from each grazing district within a State, one wildlife representative, plus others not to exceed seven representing such interests as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, and county government. The proposed regulations would limit membership to twelve. The exact composition for each State board would be specified in its charter.

Oregon and California Revested Lands Advisory Board, generally called the O. and C. Board, consists of 18 members. In 1973 it had the following interests represented by the indicated number: Forestry and timber management (6); public (3); State government (1); land use (1); labor (1); ecology (1); mining (1); outdoor recreation (1); agriculture (1); resource management (1); and county government (1). The proposed regulations would reduce the overall number to twelve. The exact composition would be specified in its charter.

District Boards under the present system fall into two categories: advisory boards for grazing districts, and district O. and C. Boards for the Oregon and California Revested lands in Western Oregon. The present grazing district advisory boards are composed of five to twelve livestock members plus one wildlife representative. The O. and C. district boards are composed of twelve to fifteen members similar to the listing for the O. and C. Advisory Board in the preceding paragraph. Eleven BLM administrative districts do not have advisory boards under present regulations. Swen BLM administrative districts encompass two grazing districts, and therefore have two district advisory boards. The proposed regulations would authorize one multiple use advisory board of not more than ten members for each BLM administrative district. Exact composition would be specified in each charter.

The National Advisory Board for Wild Free-Roaming Horses and Burros will be the subject of separate rulemaking.

In accordance with the Department's policy on public participation in rulemaking (36 FR 8336), interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until February 10, 1975.

Copies of comments, suggestions, or objections made pursuant to this notice will

be available for public inspection in the Division of Legislation and Regulatory Management, Bureau of Land Management, Room 5555, Interior Building, Washington, D.C., during regular business hours (7:45 a.m.—4:15 p.m.).

It is hereby determined that the publication of this amendment is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C)) is required.

Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

1. Subpart 1784 is amended by adding § 1784.5 through 1784.7 to read as follows:

Subpart 1784—Advisory Boards

- | | |
|--------|-------------------------------------|
| Sec. | |
| 1784.5 | National Advisory Boards. |
| 1784.6 | State and Regional Advisory Boards. |
| 1784.7 | District Advisory Boards. |

§ 1784.5 National Advisory Boards.

(a) *National Advisory Board.* (1) *Functions and duties.* The National Advisory Board shall consider and make recommendations on policies and problems of a national scope related to resources and uses of the public lands under the jurisdiction of the Bureau of Land Management.

(2) *Membership.* The livestock members of each State Multiple Use Advisory Board shall select from its members, at a meeting of each new term, one member to represent livestock on the National Advisory Board. The wildlife member on each State Multiple Use Advisory Board will serve on the National Advisory Board representing wildlife interests as follows: in odd numbered calendar years, members from Arizona, Colorado, Idaho, Montana, California, and Alaska; in even numbered years, members from New Mexico, Utah, Wyoming, Oregon, Nevada, and Alaska. The State Directors for the Bureau of Land Management shall submit to the Director of the Bureau of Land Management a list of nominees selected from nonlivestock and nonwildlife interests in their States. From this list and from other sources as he may determine, the Director, with the concurrence of the Secretary of the Interior, shall appoint 20 members to the National Advisory Board as follows: 1 representative from the State of Washington, 1 representative from the State of Alaska, 2 mining representatives, 2 forestry representatives, 2 leaseable mineral representatives, 3 outdoor recreation representatives, 2 urban-suburban representatives (including real estate

development), 1 environmental quality representative, 1 public information representative, 2 county government representatives, 1 State government representative, 1 soil and water conservation representative, and 1 public utilities representative.

(3) *Meetings.* The Board shall meet at the call of the Director, Bureau of Land Management, and shall elect its own officers. The Federal representative at all meetings shall be the Director, Bureau of Land Management, or his authorized representative.

(4) *Administrative Support.* Administrative support of the Board shall be the responsibility of the Director, Bureau of Land Management.

§ 1784.6 State and Regional Advisory Boards.

(a) *State Multiple Use Advisory Boards.* (1) *Functions and duties.* The State Multiple Use Advisory Boards shall consider and make recommendations to the State Director to whom they report on policies and problems of State or regional scope related to resources and uses of lands administered by the Bureau of Land Management in the State or States within their respective areas of jurisdiction.

(2) *Areas of jurisdiction:*

Board:	States of jurisdiction
Alaska -----	Alaska.
Arizona -----	Arizona.
California -----	California.
Colorado -----	Colorado.
Idaho -----	Idaho.
Montana -----	Montana, North Dakota, South Dakota.
Nevada -----	Nevada.
New Mexico -----	New Mexico, Oklahoma, Texas.
Oregon -----	Oregon, Washington.
Utah -----	Utah.
Wyoming -----	Wyoming, Kansas, Nebraska.
Eastern States --	Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

(3) *Membership.* From recommendations by District Managers, statewide or regional organizations and associations, and from other sources as he may determine, the State Director to whom the Board will report shall nominate no more than 12 individuals to the Director who shall, with concurrence of the Secretary, appoint a board that is balanced in terms of the points of view represented and the functions to be performed by the Board.

(4) *Meetings.* State multiple use advisory boards shall meet at the call of the State Director to whom the board reports and shall elect their own officers. The Federal representative at all meetings shall be that State Director or his authorized representative.

(5) *Administrative Support.* The administrative support of a State multiple use advisory board shall be the responsibility of the State Director to whom it reports.

(b) *O. and C. Multiple Use Advisory Board (Oregon).* (1) *Functions and duties.* The O. and C. Multiple Use Ad-

visory Board shall consider and make recommendations to the Oregon State Director on policies and problems related to resources and uses of the Revested Oregon and California Railroad and Re-conveyed Coos Bay Wagon Road Grants Lands administered by the Bureau of Land Management.

(2) *Membership.* From recommendations by District Managers, statewide or regional organizations and associations, and from other sources as he may determine, the Oregon State Director shall nominate no more than 12 individuals to the Director who shall, with concurrence of the Secretary, appoint a board that is balanced in terms of the points of view represented and the functions to be performed by the board.

(3) *Meetings.* The O. and C. Multiple Use Advisory Board shall meet at the call of the Oregon State Director and shall elect its own officers. The Federal representative at all meetings shall be the Oregon State Director or his authorized representative.

(4) *Administrative Support.* The administrative support of the O. and C. Multiple Use Advisory Board shall be the responsibility of Oregon State Director.

§ 1784.7 District Advisory Boards.

(a) *District Multiple Use Advisory Boards.* (1) *Functions and duties.* A District Multiple Use Advisory Board shall consider and make recommendations to the District Manager to whom it reports on policies and problems of District scope related to resources and uses of lands administered by that District Manager.

(2) *Membership.* The District Manager to whom the board reports shall, with the concurrence of the State Director, appoint to the board such members resulting in a total membership that is balanced in terms of the points of view represented and the functions to be performed by the board. The membership of each District Multiple Use Advisory Board shall not exceed ten.

(3) *Meetings.* District Multiple Use Advisory Boards shall meet at the call of the District Manager to whom the board reports and shall elect their own officers. The Federal representative at all meetings shall be that District Manager or his authorized representative.

(4) *Administrative support.* The administrative support of a District Multiple Use Advisory Board shall be the responsibility of the District Manager to whom it reports.

A. In subpart 4114, the heading is revised to read:

Subpart 4114—Local Associations of Stockmen

§§ 4114.3-1—4114.3-4 [Deleted]

§ 4114.4-3 [Amended]

B. Sections 4114.1 through 4114.3-4 and paragraph (c) of § 4114.4-3 are deleted.

§ 4115.2-1 [Amended]

3. Section 4115.2-1 is amended as follows: (a), (b), and (c) are revised to read as follows:

(a) *Filing of applications; consideration of annual changes in grazing use.* Each year a date will be set by the authorized officer prior to which all annual applications for grazing use must be filed; applications filed after such date may be rejected for that year on the basis of late filing. When grazing is approved, a bill will be issued and payment of fees due will be made in accordance with paragraph 4115.2-1(k).

(b) *Proposed decisions; protests.* If the authorized officer's decision on an application for grazing use is to any extent adverse, a proposed decision will be served upon the applicant setting forth the reasons for the action, including reference to the pertinent provisions of the regulations. Such proposed decision shall allow a period of 15 days after receipt for the filing of a protest in person or in writing with the authorized officer. In the absence of a protest, the proposed decision shall become the final decision of the authorized officer without further notice.

(c) *Final decision on protests.* Upon the timely filing of a protest, the authorized officer will reconsider the application for grazing use in the light of such protest. In so doing, he is authorized to seek advice and recommendations from the District Multiple Use Advisory Board. At the conclusion of his review of the protest, the authorized officer will issue a final decision which shall be served on the applicant and all known parties of interest.

B. In (e)(8)(ii) the words "after recommendation by the advisory board" are deleted.

C. In paragraphs (e)(10) and (e)(11) the words "after reference to the advisory board" are deleted.

§ 4115.2-2 [Amended]

6. Section 4115.2-2 is amended in paragraphs (a)(2) and (b)(3) by deleting the words "after reference to the advisory board".

§ 4115.2-5 [Amended]

7. Section 4115.2-5(a)(3) is amended by deleting the words "after reference to the advisory board".

JACK HORTON,
Assistant Secretary of the Interior,
DECEMBER 24, 1974.

[FR Doc.74-30425 Filed 12-27-74; 8:45 am]

Bureau of Indian Affairs [25 CFR Part 221] IRRIGATION OPERATION AND MAINTENANCE CHARGES Fort Hall Irrigation Project Correction

In FR Doc. 74-27824, on page 41534 of the issue of Friday, November 29, 1974, the fifth and sixth lines of § 221.33 should be changed to read "Indian ownership, and against lands in Indian ownership which do not qualify".

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 26]

GRAIN STANDARDS

Proposed Effective Date of Regulations

Statement of considerations. Section 12 of the U.S. Grain Standards Act (7 U.S.C. 87a) prescribes the retention of file samples by official inspection agencies. It further prescribes that file samples shall be required to be retained for such period as the Secretary, after consultation and due consideration, shall prescribe. Section 26.57 of the regulations (7 CFR 26.57) under the Act prescribes applicable retention periods.

On August 28, 1969, there was published in the FEDERAL REGISTER (34 FR 13729) a notice announcing that the effective date of §§ 26.55(b)(2) and 26.57 of the regulations (7 CFR 26.55(b)(2) and 26.57) under the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) regarding the retention of official file samples of grain was delayed until further notice to provide additional time for carrying out the provisions of the sections.

Official inspection agencies and the Department have now had time to develop and try various types of maintenance systems for file samples and for the Department to develop and issue needed instructions for the retention and use of file samples on a nationwide basis. Many official inspection agencies are presently retaining file samples on a voluntary basis, and suitable containers are readily available at a nominal cost.

File samples are needed and are being used in increasing numbers for reinspections and appeal inspections at substantial savings to applicants for inspection. They are also of substantial use in performing supervision inspections, resolving intermarket grade complaints, and for handling special requests for applicants.

Accordingly, the Agricultural Marketing Service now proposes to implement section 12 of the U.S. Grain Standards Act (7 U.S.C. 87a) and §§ 26.55(b)(2) and 26.57 of the regulations thereunder (7 CFR 26.55(b)(2) and 26.57) by requiring, effective March 1, 1975, the mandatory retention by official inspection agencies of file samples of grain inspections in accordance with the provisions of section 26.57 of the regulations. Sections 26.55(b)(2) and 26.57 will be implemented as originally published without change as follows:

§ 26.55 Maintenance and availability of records.

(b) *Records on inspection activities.* The complete record shall include (1) detailed work records, (2) official file samples, and (3) official certificates, as prescribed in §§ 26.56, 26.57, and 26.58. The record for each inspection shall be kept

in such manner as to permit comparison with the record for other inspections on the same identified grain.

§ 26.57 File samples.

(a) *General.* For each official inspection, an official file sample shall be maintained in accordance with paragraphs (b) through (h) in this section: *Provided*, That no file sample need be maintained for checkweighing and other types of inspections which are not based on an examination of the grain in a sample.

(b) *Who shall maintain samples.* File samples shall be maintained by the official inspection personnel who performed the inspection or by the official inspection agency that conducted the inspection: *Provided*, That no file sample need be maintained by a licensed employee of a grain elevator or warehouse: *And provided further*, That if a file sample maintained by an official inspection agency is used for an appeal or review inspection, the field office which conducted the appeal or review inspection shall thereafter have the responsibility for maintaining the sample.

(c) *Size of sample.* Each file sample shall consist of a worked portion and an unworked portion: *Provided*, That if the inspection does not require the use or examination of the grain in both portions, and if the applicant will not desire a portion of the sample during the prescribed retention period, only one portion is required to be maintained. Each file sample shall be of such size as will permit a reinspection, an appeal inspection, or a review inspection for the kind (scope) of inspection for which the sample was obtained. (In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.)

(d) *Containers.* Each sample shall be retained in such container and in such manner as will retain the representativeness of the sample from the time it is obtained or received by the official inspection personnel until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained in accordance with the instructions.

(e) *File system.* To facilitate the full use of file samples, each official inspection agency and each field office shall establish and maintain, in accordance with the instructions, a uniform file sample system which has been approved by the Administrator. The instructions may prescribe the kind and size of the file sample containers, the method of identification, and methods for retaining the representativeness of the samples.

(f) *Retention periods.* (1) Each file sample shall be retained for the following applicable period of time which is necessary for the handling of a reinspection, an appeal inspection, or a trade complaint:

Type of carrier (or container)	Retention period (calendar days)
Rail cars:	
In (other than en route) ¹ -----	5-7
Out -----	15
Trucks:	
In (other than en route) ¹ -----	2-4
Out -----	7
Barges:	
In (other than enroute) ¹ -----	10
Out -----	30
Bins and tanks-----	2-4
Submitted samples-----	2-4
	Composite Sublot samples samples
Ships:	
In -----	7
Out (domestic)-----	15
Out (export)-----	90
	30

¹ The retention period for an "IN" (en route) movement shall be the same as for an "OUT" movement in the identified carrier.

² 5 calendar days if applicant, or his agent, receives notice of inspection results on the date of inspection, otherwise 7 calendar days.

³ 2 calendar days if applicant, or his agent, receives notice of inspection results on the date of inspection, otherwise 4 calendar days.

⁴ If the identification of an unofficial sample is the same as the identification of a carrier, the retention period for the sample shall be the same as for an "OUT" movement in the identified carrier.

⁵ The retention of composite samples for "IN" and for "OUT (Domestic)" ship lots shall be optional with the official inspection personnel and the official inspection agency.

Samples may be kept for longer periods of time as desired at the option of the persons or agency maintaining the samples.

(2) For good cause shown, and upon request by the official inspection personnel or the official inspection agency, and with the approval of the Administrator, specified samples or classes of samples may be retained for agreed shorter periods of time.

(3) In determining the retention period, the time period shall begin on the date of the inspection involved.

(g) *Furnishing file samples to field offices.* (1) Upon request by a field office, a file sample retained by official inspection personnel or by an official inspection agency shall be furnished to the field office for an appeal inspection or a review inspection.

(2) If a sample is furnished to a field office, no portion of the sample need be retained by the official inspection personnel or the official inspection agency.

(3) Official inspection agencies furnishing file samples to a field office for appeal inspections may, upon request, be reimbursed at the rate prescribed in § 26.72, by the Grain Division for the cost of locating and sending the samples.

(h) After official file samples have been retained the prescribed period of time, they may be disposed of in accordance with the provisions of § 26.19.

Opportunity is hereby afforded all interested persons to submit written views and comments with respect to this matter to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

20250. All material submitted should be in duplicate and mailed to the Hearing Clerk not later than January 27, 1975. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

(Sec. 12 and 16, 82 Stat. 766 and 768; 7 U.S.C. 87a and 87e; 37 FR 28464 and 28476.)

Done in Washington, D.C. on: December 23, 1974.

JOHN C. BLUM,
Acting Administrator.

[FR Doc.74-30290 Filed 12-27-74;8:45 am]

[7 CFR Part 907]

HANDLING OF NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Expenses and Rate of Assessment for the 1974-75 Fiscal Year and Carryover of Unexpended Funds

This notice invites written comment relative to proposed expenses of \$433,850 and a rate of assessment of \$0.0125 per carton of oranges to support the activities of the Navel Orange Administrative Committee for the 1974-75 fiscal year under Marketing Order No. 907.

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and provisions thereof:

(1) That the expenses that are reasonable and likely to be incurred by the Navel Orange Administrative Committee during the period November 1, 1974, through October 31, 1975, will amount to \$433,850.

(2) That there be fixed, at \$0.0125 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order.

(3) That unexpended funds in excess of expenses incurred during the fiscal year ended October 31, 1974, in the amount of \$50,000, be carried over as a reserve in accordance with § 907.42 of said marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than January 13, 1975. All written

submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: December 23, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74-30341 Filed 12-27-74;8:45 am]

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Amendment of Rules and Regulations

This notice invites written comments relative to reappportioning the grower representation on the Pear Commodity Committee under Marketing Order No. 917. The principal function of the committee is to analyze supply and demand conditions and recommend, to the Secretary of Agriculture, seasonal grade, size, quality, maturity, or pack regulation of fresh shipments of California Bartlett pears. The committee also establishes marketing research and development projects and production research on pears.

The production area is geographically divided into six representation areas comprised of one or more Districts, as defined in the marketing order, for purposes of representation on the 12-member committee. The number of members from each representation area is based, insofar as practicable, upon the proportionate quantity of pears shipped from the respective representation areas during the preceding three fiscal years.

During the 1972-through-1974 shipping seasons the proportional increase in total shipments from representation area (b), as hereinafter designated, and the proportional decrease in total shipments from representation area (f) were such that the committee originated a proposal to reappportion membership from the two areas. Specifically, it is proposed that a membership from representation area (f) be transferred to representation area (b). Such a transfer would result in one member from representation area (f) and four members from representation area (b).

Accordingly, notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations *Subpart—Rules and Regulations; 7 CFR 919.100 et seq.* currently in effect pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment of said rules and regulations was proposed by the Control Committee, established under said

amended marketing agreement and order as the agency to administer the terms and provisions thereof.

The amendment would add a new § 917.121 reading as follows:

§ 917.121 Changes in nomination of Pear Commodity Committee members.

Nominations for membership on the Pear Commodity Committee shall be made by the growers of pears in the respective representation areas as follows:

(a) North Sacramento Valley District and the Central Sacramento Valley District one nominee.

(b) Sacramento River District, Stockton District, Contra Costa District, Santa Clara District, and Solano District four nominees.

(c) Placer-Colfax District one nominee.

(d) Lake District four nominees.

(e) Mendocino District and the North Bay District one nominee.

(f) El Dorado District and all of the area not included in the North Sacramento Valley District, Central Sacramento Valley District, Placer-Colfax District, Sacramento River District, Stockton District, Solano District, Contra Costa District, Santa Clara District, Lake District, Mendocino District, and North Bay District one nominee.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than January 17, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: December 23, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74-30340 Filed 12-27-74;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 118]

FINANCIAL ASSISTANCE FOR SUPPLEMENTARY CENTERS AND SERVICES, GUIDANCE, COUNSELING, AND TESTING PROGRAMS

Notice of Proposed Rule Making

In accordance with section 503 of the Education Amendments of 1972 (Pub. L. 92-318) and pursuant to the authority contained in Title III of the Elementary and Secondary Education Act, as amended (20 U.S.C. 841-8), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45, Part 118 of the Code of Federal Regulations to read as set forth below. The

Commissioner also proposes to establish guidelines for this program, which are set forth following the text of the proposed regulation. Separate regulations containing provisions governing grants to local educational agencies for special programs and projects and section 306 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 844b) are being proposed for inclusion in Part 126 of Title 45 of the Code of Federal Regulations.

1. *Program purpose.* Title III of the Elementary and Secondary Education Act, as amended, provides for assistance to States for planning and establishing supplementary educational centers and services and guidance, counseling, and testing programs.

2. *Section 503 procedures and effect.* Section 503 of the Education Amendments of 1972 requires the Commissioner to study all rules, regulations, guidelines, or other published interpretations or orders issued by him or by the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; to report to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives concerning such study; and to publish in the FEDERAL REGISTER such rules, regulations, guidelines, interpretations, and orders, with an opportunity for public hearing on the matters so published. The regulations and guidelines proposed below reflect the results of this study as it pertains to the program under Title III of the Elementary and Secondary Education Act, as amended. Upon publication of revised Part 118 in final form, and after comments and hearing, all preceding rules regulations, guidelines, interpretations, and orders issued in connection with or affecting Part 118 will be superseded effective thirty days after such publication.

3. *Effect of Office of Education general provisions regulations.* The proposed regulations differ from the current regulations in that provisions have been deleted relating to general fiscal and administrative matters which are presently covered in 45 CFR Part 118 and which are covered by the overall Office of Education general provisions regulations, published in the FEDERAL REGISTER at 38 FR 30654 (November 6, 1973), in connection with the same study under section 503 of the Education Amendments of 1972 of which this publication is a part. (Reference is made in particular to the provisions of proposed Part 100b of Title 45 CFR, containing general provisions for State-administered programs which are applicable to the program under Title III of the Elementary and Secondary Education Act, as amended.)

4. *Guidelines.* Guidelines for the program have not previously been published in the FEDERAL REGISTER. The guidelines proposed below essentially contain recommendations and suggestions for pro-

gram management and operation and are designed to incorporate all materials covered by section 503 of the Education Amendments of 1972 not otherwise reflected in the regulations. When finally published in the FEDERAL REGISTER in accordance with section 503(d), the guidelines will be stated separately in the general notice section of the FEDERAL REGISTER.

5. *Citations of legal authority.* As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232 (a)) and section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations and guidelines has been placed in parentheses on the line following the text of the section.

On occasion, a citation appears at the end of a subdivision of the section. In that case the citation is to all that appears in that section above the citation and following the last preceding citation. When the citation appears only at the end of the section, it applies to the entire section.

6. *Opportunity for public hearing.* Pursuant to section 503(c) of the Education Amendments of 1972, the Commissioner will provide interested parties an opportunity for a public hearing on these regulations and guidelines, as follows:

A hearing will take place at the U.S. Office of Education on March 5, 1975, in the auditorium of the Regional Office Building Three (ROB-3) located at 7th and D Streets SW., Washington, D.C. 20202, beginning at 10:00 a.m.

The purpose of the hearing is to receive comments and suggestions on the published materials. Parties interested in attending the hearing should notify the Office of Education, Attention: Chairman, Office of Education Task Force on Section 503, Room 2085, 400 Maryland Avenue SW., Washington, D.C. 20202, and are urged to submit a written copy of their comments at the hearing is urged to limit his presentation to a maximum of fifteen minutes.

Interested parties may also submit written comments and recommendations to the above address. All relevant material received prior to the date of the hearing will be considered. Comments and suggestions submitted in writing will be available for review in the above office between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week.

(Catalog of Federal Domestic Assistance No. 13.519, Supplementary Educational Centers and Services, Guidance, Counseling, and Testing (PACE) (Projects to Advance Creativity in Education))

Dated: August 27, 1974.

T. H. BELL,
U.S. Commissioner of Education.

Approved: December 16, 1974.

CASPAR W. WEINBERGER,
Secretary of Health,
Education, and Welfare.

PART 118—SUPPLEMENTARY CENTERS AND SERVICES: GUIDANCE, COUNSELING AND TESTING PROGRAMS

Subpart A—Scope of Regulations; Definitions

- Sec.
118.1 Scope of regulations.
118.2 Definitions.

Subpart B—State Advisory Council

- 118.3 Establishment and certification.
118.4 Functions.
118.5 [Reserved.]

Subpart C—The State Plan

- 118.6 Preparation of plan.
118.7 State educational agency.
118.8 General plan provisions.
118.9 Supplementary educational centers and services.
118.10 Testing.
118.11 Guidance and counseling.
118.12 Equitable distribution of assistance.
118.13 Special consideration for certain local educational agencies.
118.14 Percentage requirements regarding uses of funds.
118.15 Participation by private school children.
118.16 Reports and records.
118.17 Supplementary nature of projects.
118.18 Approval of State plans.
118.19 Inability or failure to serve private school children.
118.20 Operational noncompliance.

Subpart D—Program Requirements

- 118.21 Purpose.
118.22 General requirements.
118.23 Applications for grants.
Sec.
118.24 Criteria for review of project applications.
118.25 Innovative and exemplary projects.
118.26 Projects for handicapped children.
118.27 Project period amendment, continuation costs, and termination of projects.
118.28–118.31 [Reserved.]

Subpart E—Fiscal Procedures

- 118.32 Grant awards.
118.33–118.40 [Reserved.]

Subpart F—Equipment and Construction

- 118.41 Recovery of payments.
118.42–118.50 [Reserved.]

Subpart G—General Provisions

- 118.51 Payment of funds.
118.52 Reallotment.
118.53 Annual and other reports.
118.54–118.58 [Reserved.]

AUTHORITY: The provisions of this Part 118 are issued under 20 U.S.C. 841–844a, 845–847a. Interpret or apply 20 U.S.C. 841–847a, 881, 885, and 1232–1232c.

Subpart A—Scope of Regulations; Definitions

§ 118.1 Scope of regulations.

The regulations published in this part are applicable to grants to States for planning and establishing supplementary educational centers and services and guidance, counseling, and testing programs. Regulations applicable to grants for such purposes by the U.S. Commissioner of Education directly to local educational agencies pursuant to section 306 of Title III of the Elementary and Secondary Education Act of 1965, as

amended (20 U.S.C. 844b), will be published in Part 126 of this title. Allotments of Federal funds under Title III of the Act to the Departments of Interior and Defense pursuant to section 302(a) (1) of the Act (20 U.S.C. 842(c) (1)) shall be governed by such terms and conditions consistent with the Act as may be mutually agreed upon by these Departments and the Commissioner. Assistance provided under this part is also subject to applicable provisions contained in subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 842(a) (1))

§ 118.2 Definitions.

As used in this part:

"Act" means the Elementary and Secondary Education Act of 1965, Pub. L. 89-10, as amended.

(20 U.S.C. 841-844a, 845-849)

"Children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.

(20 U.S.C. 843(b) (3))

"Construction" means (a) the erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; (b) the acquisition of existing structures not owned by the agency making application for assistance under Title III of the Act; (c) the remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (d) a combination of any two or more of the foregoing.

(20 U.S.C. 881(b))

"Cultural and educational resources" includes State educational agencies, institutions of higher education, private schools, public and nonprofit private agencies such as libraries, museums, musical and artistic organizations, educational radio and television, and other cultural and educational resources.

(20 U.S.C. 844(a))

"Dissemination" means communications with people about the operations and outcomes of demonstrations of exemplary practices in education in order to facilitate the adoption and replication of tested educational innovations in the host school system and other school systems in the State.

(20 U.S.C. 843(c) (3))

"Exemplary," as applied to an educational program, project, service, or activity, means one designed to serve as a model for a regular school program.

(20 U.S.C. 843(b) (2))

"Free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State. Elementary education may include kindergarten education meeting the above criteria.

(20 U.S.C. 845)

"Guidance and counseling," in relation to activities undertaken pursuant to section 303(b) (4) of the Act (20 U.S.C. 843(b) (4)), refers to (a) services to pupils to assist them in assessing and understanding their particular abilities, educational needs, and career and vocational interests in light of all applicable environmental factors and (b) assistance in personal and social development, including the development of a positive self-concept when related to career and vocational guidance and counseling.

(20 U.S.C. 843(a), (b) (4))

"Handicapped children" means those children who are mentally retarded, hard of hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health-impaired, who by reason thereof require special education and related services. The term includes children with specific learning disabilities to the extent that such children are health-impaired children who by reason thereof require special education and related services.

(20 U.S.C. 843(b) (3))

"Innovative," as applied to an educational program, project, service or activity, means new or improved ideas, practices, or techniques.

(20 U.S.C. 843(b) (3))

"Junior college" means an institution of higher education which (a) is organized and administered principally to provide a one-year or two-year program which is acceptable for full credit toward a bachelor's degree; (b) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (c) is legally authorized within the State to provide a program of education beyond secondary education; (d) is a public or other nonprofit institution; (e) is accredited by a nationally recognized accrediting agency or association, or, if not so accredited (1) is an institution with respect to which the Commissioner has determined that there is satisfactory assurance—considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made—that the institution will meet the accreditation standards of such an

agency within a reasonable period of time, or (2) is an institution whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; (f) if a branch of an institution of higher education offering four or more years of higher education, is located in a community different from, and beyond a reasonable commuting distance from, the community in which the main campus of the parent institution is located.

(20 U.S.C. 844a(b) (1) (B))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. The term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school such as State-operated schools for deaf, blind, mentally retarded, emotionally disturbed or crippled. "Service function," as used in this paragraph means an educational service which is performed by a legal entity—such as an intermediate agency—whose jurisdiction does not extend to the whole of the State and which is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools, or which has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools, rather than a service which is performed by a cultural or educational resource.

(20 U.S.C. 881(f))

"Private school" means a nonprofit school which is operated or controlled by other than a public authority, and which complies with State compulsory school attendance laws or is otherwise recognized or accredited by some procedure customarily used in the State, as having curricula similar to that required of comparable public schools.

(20 U.S.C. 843(b) (4), 844(b) (2) (B), 845(f))

"Seriously emotionally disturbed children" means

(a) Those children who exhibit one or more of the following characteristics over a long period of time and to a marked degree:

(1) An inability to learn that which cannot be explained by intellectual, sensory, or health factors;

(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3) Inappropriate types of behavior or feelings under normal circumstances;

(4) General pervasive mood of unhappiness or depression; and/or

(5) A tendency to develop physical symptoms, pains, or fears associated with personal or school problems.

(d) This term does not include those children who are socially maladjusted.

(20 U.S.C. 843(b)(3))

"State aid" means any contribution by a State made to or on behalf of a local educational agency within the State for the support of free public elementary and secondary education, for which no repayment is expected.

(20 U.S.C. 845(e))

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(20 U.S.C. 881(k))

"Technical institute" means an institution of higher education which (1) meets the requirements of subparagraphs (b) through (f) of the definition of "junior college" set forth in this section, and (2) is organized and administered principally to provide a 2-year program in engineering, mathematics, or the physical or biological sciences which program is designed to prepare the student to work as a technician at a semi-professional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge.

(20 U.S.C. 843(b)(4))

"Testing," in relation to activities undertaken pursuant to Section 303(b)(4) of the Act, means the use of tests which measure abilities from which aptitudes for an individual's educational or career development may be validly inferred.

(20 U.S.C. 844a(b)(1)(B))

Subpart B—State Advisory Council

§ 118.3 Establishment and certification.

(a) Each State desiring to receive payments under title III of the Act and the regulations in this part for any fiscal year shall establish a State advisory council which is appointed by the State educational agency, and is broadly representative of the cultural and educational resources (as defined in § 118.2 of this part) of the State and of the public, including persons representative of: (1) Elementary and secondary schools; (2) institutions of higher education; (3) areas of professional competence in dealing with children needing special education because of physical or mental handicaps; (4) areas of professional competence in guidance, counseling, and testing; (5) children from low-income families and other low-income individuals; and (6) other cultural and educational resources including State agencies, institutions of higher education, non-profit private schools, and nonprofit private agencies such as libraries, museums, musical and artistic organizations, and educational radio and television.

(b) The Chief State School Officer or any member of the State educational agency shall be ineligible to serve on the State advisory council either as a chairman or as a voting member.

(c) The State educational agency shall certify the establishment of, and membership of, its State advisory council to the Commissioner at least 90 days prior to the beginning of any fiscal year in which the State desires to receive a grant under Title III of the Act and the regulations in this part. The certification shall include the name, education, experience, and current position of each person serving on the State advisory council and shall specify which interest under paragraph (a) of this section each person represents.

(20 U.S.C. 844a(a))

§ 118.4 Functions.

(a) The functions of the State advisory council shall include: (1) Advising the State educational agency on the preparation of, and policy matters arising in the administration of the State plan and in the development of the policies and procedures required by these regulations, including the criteria for approval of applications under the State plan; (2) reviewing and making recommendations to the State educational agency on the action to be taken with respect to each application for a grant under the State plan; (3) evaluating programs and projects assisted under Title III of the Act; and (4) preparing and submitting through the State educational agency annual reports of its activities, recommendations, and evaluations, together with such additional comments as the State educational agency deems appropriate, to the Commissioner and to the National Advisory Council on Supplementary Centers and Services which was established pursuant to section 309 of the Act. These reports shall be submitted at the time and in the format prescribed by the Commissioner.

(b) The State advisory council shall meet and select a chairman from its membership within 30 days after certification under § 118.3 of this part has been accepted by the Commissioner, and shall meet at such other times throughout the year as may be necessary to fulfill its functions under paragraph (a) of this section. The time, place, and manner of such meetings shall be determined by the council, except that it shall hold not less than one public meeting each year at which the public is given opportunity to express views concerning the administration and operation of the Act.

(c) The State advisory council shall be authorized to obtain (with funds paid to the State under Section 307(b) of the Act) the services of such professional, technical and clerical personnel as may be necessary to enable it to carry out its functions under paragraph (a) of this section, and to contract for such services as may be necessary to enable it to carry out its evaluation functions.

(20 U.S.C. 843(c), 844a(a), 845(b))

§ 118.5 [Reserved]

Subpart C—The State Plan

§ 118.6 Preparation of plan.

(a) *General.* Any State desiring to receive funds under the Act for any fiscal year shall, as a condition to the receipt of such funds, submit a State plan to the Commissioner, using such forms as will be provided by the Commissioner and which will meet the requirements of the Act and these regulations.

(b) *Submission.* The State plan shall be submitted annually. It shall be developed in the light of all relevant information obtained in the prior year from reassessments of educational needs, evaluations of programs and projects funded under the Act, and reports and recommendations of the State advisory council.

(c) *Certifications.*—(1) *By State educational agency.* The State plan and each amendment thereto shall include as an attachment a certificate signed by an officer of the State educational agency authorized to submit the plan to the effect that the State plan or amendment thereto has been adopted by the State educational agency and that the State plan, or plan amended, will constitute the basis for operation and administration of the Title III program.

(2) *By the State Attorney General.* The State plan and each amendment thereto as described in § 118.6(e) of this part shall include as an attachment a certificate signed by the State Attorney General or other appropriate State legal officer to the effect that the State educational agency named in the plan is a "State educational agency" as defined in § 118.2 of this part, that has the legal authority ascribed to it in the State plan pursuant to § 118.7 of this part, and that all the provisions of the State plan may be carried out in the State.

(d) *Review by the State Governor.* In accordance with § 118.22(b)(2) of this part, the State plan and each amendment thereto shall include as an attachment the comments, if any, of the Governor of the State concerning coordination of Title III programs and projects under the State plan with other State and Federal programs and projects, or a statement from the Chief State School Officer that the Governor has reviewed the plan but no comments were made.

(e) *Amendments.* Whenever there is any change in the content or administration of the program set forth in the approved State plan, or whenever there is any change in pertinent State law or in the organization, policies, or operations of the State educational agency which materially affects the program under the plan, the State plan shall be appropriately amended and such amendment shall be submitted to the Commissioner for his approval. Any amendment shall be accompanied by a certificate of the State Attorney General or other State legal officer.

(20 U.S.C. 844a(a)(1), (b))

§ 118.7 State educational agency.

(a) *Designation.* The State plan shall give the official name of the State educational agency which will be, either directly or through arrangements with other State or local public agencies, the sole agency responsible for administering the plan.

(b) *Authority.* The State plan shall set forth the authority of the State educational agency under State law to submit the plan and to administer and supervise the programs set forth therein pursuant to § 118.6(c) (2) of this part.

(c) *Organization.* The State plan shall set forth the administrative organization, the qualifications of all staff members involved, and the procedures of the State educational agency for administration of the State plan. Staffing shall be sufficient to carry out the following Title III functions: (1) program coordination; (2) program development; (3) project proposal review; (4) program operations; (5) program evaluation; (6) dissemination; and (7) grants management and finance.

(20 U.S.C. 844a(a) (1) (C), 1232c(b))

(d) *Fiscal control.* The State plan shall designate the officer or officers of the State educational agency who will have legal authority to receive all funds granted to the State and to authorize their expenditure or transfer to local educational agencies in accordance with § 100b.257 of this chapter. The State plan shall also set forth the fiscal control and fund accounting procedures (consistent with subpart E of the regulations in this part and part 100b of this chapter) under which the designated officer or officers will assure proper disbursement of and accounting for Federal funds paid to the State under Title III of the Act.

(20 U.S.C. 844a(a) (1) (C), (b) (2), and (10))

§ 118.8 General plan provisions.

(a) *Assessment of educational needs.* The State plan shall identify the critical educational needs of the State as a whole and the critical educational needs of the various geographic areas and population groups within the State, and shall describe the process by which such needs were identified. This process shall be based upon the use of objective criteria and measurements and shall include procedures for collecting, analyzing, and validating relevant data and translating such data into determinations of critical educational needs. These determinations and the data upon which they are based shall be periodically reviewed and updated, and the State plan shall indicate the most recent date of such review and updating.

(20 U.S.C. 844a(b) (1) (A), (b) (3), 1232c(b))

(b) *Developing evaluation strategies.* The State plan shall provide for, and describe the objectives of, and the procedures to be used in the evaluation by the State advisory council, at least annually, of the effectiveness of the programs and projects funded under the

State plan in meeting the purposes of the Act.

(20 U.S.C. 844a(a) (2) (D))

(c) *Dissemination of information.* The State plan shall provide for, and describe the objectives of, and procedures to be used in, the statewide dissemination of the results of evaluations performed under paragraph (b) of this section and of other information concerning those programs and projects which are determined through such evaluations to be innovative, exemplary, and of high quality.

(d) *Adoption and adaptation of promising practices.* The State plan shall provide for, and describe the objectives of, and the procedures to be used in, the adoption and adaptation within the State of promising educational practices developed through programs or projects funded under the Act.

(20 U.S.C. 844a(b) (6))

(e) *Professional development activities.* The State plan shall set forth procedures which will be utilized for professional staff development of State and local administrative, instructional, and supporting personnel involved in developing, conducting, or monitoring programs or projects under Title III of the Act.

(20 U.S.C. 1232c(b))

(f) *Reviewing local project applications.* The State plan shall (1) list and describe any criteria, required by § 118.24(a) of this part, which the State educational agency will use in reviewing local project applications (including applications for guidance, counseling, and testing projects) submitted under § 118.23 of this part; (2) describe the procedures which the panel of experts, State educational agency, and State advisory council will use in the review process with the results of their separate reviews forming the basis for a recommendation to the Chief State School Officer; and (3) provide that final action regarding the proposed final disposition of any local project application (or amendment thereof) shall not be taken without first affording the local educational agency or agencies submitting such application reasonable notice and opportunity for a hearing before a board or official designated by the State educational agency for such purpose, and specified in the State plan.

(20 U.S.C. 844a(a) (1) (C), (b) (12), 1232c(b))

(g) *Commingleing of funds.* The State plan shall set forth policies and procedures which assure that funds made available under the Act for programs and projects for any fiscal year will not be so commingled with State or local funds as to lose their identity as Title III funds.

(20 U.S.C. 844a(b) (9) (A))

(h) *State aid.* The State plan shall contain adequate assurance that, in determining the eligibility of any local educational agency for State aid or the amount of such aid, grants to that

agency under the Act will not be taken into consideration.

(20 U.S.C. 844a(b) (13))

§ 118.9 Supplementary educational centers and services.

The State plan shall set forth a program for improving education in the State through grants to local educational agencies to carry out the purposes of the Act as set forth in section 301(a) of the Act. The program shall be based upon an assessment of, and be designed to meet, the critical educational needs of the State as determined under § 118.8(a). Such program shall be related to and coordinated with the program for testing under § 118.10 and the program of guidance and counseling under § 118.11.

(20 U.S.C. 841(a), 844a(b) (1) (A))

§ 118.10 Testing.

(a) If a State wishes to conduct a testing program with Title III funds, the State plan shall set forth a program for testing students in the public and private elementary and secondary schools of the State or in the public and private junior colleges and technical institutes of the State. In so doing, the plan shall (1) describe the primary objectives of the program, (2) identify the grade levels of students to be tested, and (3) describe the types of tests to be utilized for the measurement of aptitudes and abilities.

(b) The testing program set forth in paragraph (a) of this section shall include at least one test for students not beyond grade 12, and shall be utilized to (1) identify students with outstanding aptitudes and abilities; (2) provide such information about the aptitudes and abilities of students as may be needed in connection with the guidance and counseling program required by § 118.11 of this part and (3) provide such information as may be needed to assist other educational or training institutions and prospective employers in assessing the educational and occupational potential of students seeking admission to educational or training institutions or employment.

(c) Consistent with the applicable provisions of part 100b of this chapter, to the extent that the following items of cost are attributable to the programs approved under the State plan, the cost of supervisory and related services in testing programs in which Federal participation may be claimed include such categories of expense as:

(1) The purchase or rental of tests, answer sheets, cumulative record forms, and such other materials needed under the plan; and

(2) The rental of equipment for scoring, processing and reporting the results of tests administered under the plan, or, if such equipment is owned by State or local agencies, the pro-rata share of the cost of maintaining and operating such equipment.

(d) In fulfilling the requirements of this section, the State educational agency may provide services at the State level,

make arrangements with local educational agencies or other appropriate local or State agencies, or contract with public or private nonprofit institutions, agencies, or individuals, for the provision of services consistent with the State's responsibilities under these regulations.

(20 U.S.C. 843(b)(4), 844a(b)(1)(B)(i), 1224, 1232c(b), Section 131(b) of P.L. 91-230)

§ 118.11 Guidance and counseling.

(a) If a State wishes to conduct a guidance and counseling program with Title III funds, the State plan shall set forth a program of guidance and counseling designed to improve such existing services at the appropriate levels in the public elementary and secondary schools or public junior colleges and technical institutes of the State and, to the extent required by § 118.15 of this part, in the private elementary and secondary schools of the State. Such program shall serve to advise students regarding courses of study best suited to their abilities, aptitudes and skills, the type of educational program they should pursue, the vocation they should train for and enter, and the job opportunities in the various fields. Also, it will encourage students with outstanding aptitudes and abilities to complete their secondary school education, take the necessary courses for admission to institutions of higher education, and enter such institutions. Such programs shall include occupational information and counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education, and may include short-term training sessions for persons engaged in guidance and counseling in elementary and secondary schools, junior colleges, and technical institutes in the State.

(b) Guidance and counseling services under the State plan shall be provided by qualified counselors through appropriate individual and group processes. Such processes shall be coordinated with other pupil personnel services and guidance and counseling resources both within and outside the school setting, and shall include referral assistance, working with other staff members in planning curriculum content and changes, and consulting both teachers and parents with regard to the learning and developmental needs of pupils.

(c) The program set forth under paragraph (a) of this section shall make provision for supervision and leadership activities by the State educational agency with regard to the establishment, maintenance, and improvement of guidance and counseling services. Such activities shall include the assessment of other Federal and State programs (such as Titles I and V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241 *et seq.*) and (20 U.S.C. 862-869a), Part B of the Education of the Handicapped Act (20 U.S.C. 1411-14), and the Vocational Education Act of 1963 (20 U.S.C. 1241 *et seq.*)) where there may be need for State-level supervision and leadership with respect to guidance

and counseling, and the development of procedures for determining how these various programs and sources of funds can be coordinated to provide for strong leadership in the area of guidance and counseling.

(d) In addition to the activities set forth in paragraph (c) of this section, the program set forth under paragraph (a) of this section may also include the provision for services at the State level, through arrangements (including project grants under paragraph (e) of this section) with local educational agencies or other appropriate local or State agencies, or through contracts with public or private nonprofit institutions, agencies, or individuals, which are consistent with the State's responsibilities under these regulations.

(e) Project grants under an approved State plan may be made to local educational agencies under this section for the following purposes: (1) Planning programs and projects designed to provide the services and activities described in (e)(2) and (3) of this section, including pilot projects designed to test the effectiveness of such plans; (2) establishing or expanding innovative and exemplary guidance and counseling programs and projects for the purpose of stimulating the adoption of new programs; and (3) establishing, maintaining, and improving guidance and counseling services and activities, especially through new and improved approaches consistent with the purposes of the Act.

(20 U.S.C. 843(b)(4), 844a(b)(1)(B)(ii), 1232c(b))

§ 118.12 Equitable distribution of assistance.

The State plan shall set forth criteria for achieving equitable distribution of assistance made available under the Act and these regulations. Such criteria shall be based on a consideration of (a) the size and population of the State, (b) the geographical distribution and density of the population within the State, (c) the relative need of persons in different geographic areas and in different population groups within the State for the kinds of services and activities to be provided under the plan, and (d) the relative financial abilities of local educational agencies within the State to provide such services and activities. Application of the factors set forth in this section shall not result in the approval by the State educational agency of programs or projects which fail to meet any of the requirements contained in this part.

(20 U.S.C. 844a(b)(3))

§ 118.13 Special consideration for certain local educational agencies.

The State plan shall provide for giving special consideration in those cases in which it is determined that two or more proposals are judged to be substantially the same high quality, for approving applications, for Title III programs and projects, submitted by local educational agencies (a) that are making a reasonable tax effort but are unable to

meet critical educational needs (including preschool and bilingual education) because some or all of their schools are seriously overcrowded, obsolete, or unsafe; or (b) whose proposed programs or projects were planned with funds made available under the Act. Application of the factors set forth in this section shall not result in the approval by the State educational agency of programs or projects which fail to meet any of the requirements contained in this part.

(20 U.S.C. 844a(b)(4) and (5))

§ 118.14 Percentage requirements regarding uses of funds.

The State plan shall provide that, of the funds made available under the Act for any fiscal year to carry out the State plan:

(a) An amount equal to at least 50 percent of such funds shall be expended for planning, establishing, and expanding innovative and exemplary programs and activities in accordance with § 118.25 of this part;

(b) An amount equal to at least 15 percent of such funds shall be expended for special programs or projects for the education of handicapped children in accordance with § 118.26 of this part; and

(c) Pursuant to section 131(b) of Pub. L. 91-230, an amount equal to at least 50 percent of the amount expended by the State under Title V-A of the National Defense Education Act of 1958 (20 U.S.C. 401 *et seq.*) from funds appropriated under such title for fiscal year 1970 shall be expended for guidance, counseling, or testing programs of the types set forth in §§ 118.10 and 118.11 of this part. Only projects which are predominantly or primarily of a guidance, counseling, or testing nature shall be considered in determining the total amount expended by a State from Title III funds for guidance, counseling or testing. Funds expended for the continuation of guidance, counseling, or testing projects initiated under the Act (but not under Title V-A of the National Defense Education Act of 1958) prior to fiscal year 1971 shall not be considered in computing the amount of funds which are required to be expended for such purposes under this paragraph.

(20 U.S.C. 844a(b)(7) and (8); (section 131(b) of Pub. L. 91-230))

§ 118.15 Participation by private school children.

(a) The State plan shall contain satisfactory assurances that each local educational agency receiving funds under the Act will provide for the effective participation in its Title III program or project, on an equitable basis, of children enrolled in private schools in the areas to be served whose educational needs are of the type which the program or project is designed to meet. The number of such children to be served, in relation to the total number of such children with educational needs of the type the project is designed to meet, shall be consistent with the number of public school children to be served in relation to the total number of public school children

in the area served with educational needs of the type the program or project is designed to meet.

(b) Whenever practicable, educational services shall be provided to private school children on publicly controlled premises. Any project to be carried out in public facilities which involves joint participation by children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid the separation of participating children by school enrollment or religious affiliation.

(c) Provisions for serving private school children shall not include: (1) The payment of salaries to teachers or other employees of private schools except for services performed outside regular hours of duty and under public supervision and control; (2) financing of the existing level of instruction in private schools; (3) the placement of equipment on private school premises other than portable or mobile equipment which is capable of being removed from the premises each day and is used solely for Title III purposes; (4) the construction of facilities for private schools; or (5) the use of funds for religious worship or instruction.

(d) The State educational agency shall require that every project application submitted to it by a local educational agency under § 118.23 of this part shall describe how the local educational agency will fulfill the requirements of paragraphs (a), (b), and (c) of this section. This description shall contain information indicating: (1) The number of private schools in the area to be served by the project and the number of children enrolled in such schools in the grades to be served by the project and the number of such children who have the needs to be served by the project; (2) the existence of any factors which limit the appropriateness of the project for private school children; (3) the manner in which and extent to which representatives of private school children participated in the development of the project proposal (including participation in the determinations required under paragraph (2) of the paragraph); (4) the provisions which have been made for effective liaison with representatives of private school children in regard to operation and review of the project; (5) the places at which and methods by which private school children will be served in accordance with the requirements of paragraph (b) and (c) of this section; and (6) the differences, if any, in the kind and extent of services to be provided private school children as compared with those to be provided public school children, and the reasons for such differences. Services provided to children on private school premises must not inure to the benefit or enrichment of the institution.

(20 U.S.C. 844(b)(2)(B), 845(f)(1), 885)

§ 118.16 Reports and records.

The State plan shall provide that the State educational agency will submit to

the Commissioner reports in accordance with § 118.53 of this part and Part 100b of this chapter and keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports required by § 100b.477 of this chapter.

(20 U.S.C. 844a(b)(11))

§ 118.17 Supplementary nature of projects.

(a) The State plan shall set forth policies and procedures for assuring that funds made available under the Act for any fiscal year will be used to supplement and, to the extent practical, increase (1) the fiscal effort which each local educational agency receiving Title III funds would have made in the absence of such funds for that fiscal year for educational purposes, as required by Section 305(b)(9) of the Act, and (2) the level of funds which each local educational agency receiving Title III funds would have made available in the absence of such funds for that fiscal year for the purposes described in Section 303(b) of the Act as required by Section 304(a)(3) of the Act.

(b) The State plan shall set forth policies and procedures for assuring that funds will not be used to supplant programs that would have been carried out with State or local funds in the absence of Title III funds.

(c) For the purposes of paragraph (a)(1) of this section, fiscal effort of a local educational agency for educational purposes shall be determined by the State educational agency on the basis of the amount of expenditures per pupil of the local educational agency from State and local funds; or in the event of a decrease of such expenditures, on the basis of the ratio between the total expenditures of the local educational agency from State and local funds and the wealth of the local educational agency as measured by the equalized assessed valuation of taxable property, per capita income, or other such indices as appropriate.

(20 U.S.C. 844(a)(3), 844a(b)(9)(B), 844a(b)(13))

§ 118.18 Approval of State plans.

(a) *Full approval or disapproval.* The Commissioner will review each State plan or amendment thereto submitted under § 118.6 of this part and approve those plans and amendments which he determines to meet the requirements of the Act and the regulations in this part. Except as provided in paragraph (b) of this section, the Commissioner will disapprove a plan which fails to comply with such requirements.

(b) *Partial approval.* If the Commissioner finds that a State plan submitted under § 118.6 of this part, pursuant to section 305(c) of the Act, is in substantial compliance with the Act and the regulations in this part, but fails to adequately provide for one of the programs required by section 305(b) of the Act, or is otherwise unapprovable in any other identifiable part, he may approve that part of

the plan which he determines to be in compliance with the Act and the regulations in this part. In such a case, the Commissioner will make available to the State that part of its allotment which he determines to be necessary to carry out the approved part of its State plan. The remainder of the amount the State is eligible to receive may be made available to the State only when the unapproved portion of its State plan is so modified as to bring the plan into compliance with the Act and the regulations in this part. The amount made available to a State pursuant to this subsection may not be less than 50 percent of the maximum amount which the State is eligible to receive under paragraph (e) of this section.

(20 U.S.C. 844a(b), (c))

(c) *Effect of State plan.* The State plan, as approved by the Commissioner under this section, will constitute the basis on which Federal grants are made, and the basis for determining the propriety of expenditures of grant funds. The administration of the Title III program shall be kept in conformity with the approved plan.

(20 U.S.C. 844a, 845(a))

(d) *Notice and opportunity for hearing.* No final action under this section other than one of full approval will be taken by the Commissioner until he first notifies the State educational agency of his proposed action and affords the State educational agency a reasonable opportunity for a hearing.

(20 U.S.C. 844a(e)(1))

(e) *Maximum funding level.* A State whose State plan has been approved under this section for any fiscal year may receive for the purpose of carrying out such plan an amount not in excess of 85 percent of its allotment under Section 302 of the Act.

(20 U.S.C. 844a(d))

§ 118.19 Inability or failure to serve private school children.

(a) If the Commissioner determines under § 118.18(b) that a State plan is approvable, except that no State agency is authorized by law to provide, or there is a substantial failure to provide, for effective participation on an equitable basis by private school children enrolled in any one or more private elementary or secondary schools in the areas served by programs or projects funded under the Act, as required by §§ 118.10(a), 118.11(a), or 118.15 of this part, the Commissioner shall arrange through contracts with institutions of higher education or other competent nonprofit institutions or organizations for the provision of Title III services to such children on an equitable basis.

(b) The costs of services provided in any fiscal year under paragraph (a) of this section will be paid out of the affected State's allotment. In determining the amount to be withheld, the Commissioner will take into account (1) the number of private school children in the affected area or areas who are excluded

from effective participation in Title III programs or projects and who, except for such exclusion, might reasonably have been expected to participate; (2) the number of teachers that would reasonably have been required to serve such children; and (3) the nature and extent of services being provided to public school children in the affected area or areas by the programs or projects in which private school children are denied effective participation.

(c) In any case where the State alleges that no State agency is authorized by law to provide for the effective participation of private school children as required by §§ 118.10(a), 118.11(a), or 118.15 of this part, the State shall provide the Commissioner with a written statement signed by the State Attorney General or other appropriate State legal officer setting forth the constitutional and statutory provisions, and case law, which in his opinion prevent the State from so serving private school children.

(d) Any organization or individual acting on behalf of an eligible private school child (or children) may file a written complaint with the Commissioner if: (1) There is a Title III program or project being conducted, or one has been approved to be conducted, in the given area or district; (2) there is a child (or children) enrolled in a private school(s) in the area to be served by the program or project whose educational needs are of the type to be met by that program or project; and (3) there is a substantial reason to believe that as a result of specified acts or omissions by the responsible State educational agency or local educational agency(ies), or both, the child (or children) identified in the complaint cannot effectively participate in said program or project on an equitable basis. The Commissioner will determine whether there is a "substantial failure" under paragraph (a) of this section by using the process set forth in paragraph (e) of this section, and inform the complainant of this determination in writing.

(e) In determining whether there has been a "substantial failure" under paragraphs (a) and (d) of this section, the Commissioner will: (1) First consult the affected State educational agency and ask it to provide information concerning the alleged failure, and (2) consider all acts or omissions of the State, or a local educational agency, or other political subdivision thereof, or of any individual acting for or on behalf of such entities, in the process of assessing educational needs and planning, approving, conducting, and monitoring programs and projects under the Act and these regulations which have the effect of (i) preventing, discouraging, or otherwise limiting in any manner the effective participation by any eligible private school child in the operation of the program or project serving the area in which his private school is located, or (ii) not affording private school representatives the opportunity for effective participation in the planning and development of any pro-

gram or project in which private school children are eligible to participate.

(20 U.S.C. 844(b)(2)(B), 845(f))

§ 118.20 Operational noncompliance.

Whenever the Commissioner, after affording the State educational agency reasonable notice and opportunity for a hearing, finds that in the operation or administration of its State plan there has been a failure to comply substantially with: (a) any provision of the Act and the regulations in this part, (b) any provision set forth in the plan of that State as approved under § 118.18 of this part, or (c) any provision set forth in an application of one of the State's local educational agencies as approved under § 118.23 of this part, he will notify the State educational agency that further payments will not be made to the State under the Act, or that the State educational agency may not make further payments under the Act to specified local educational agencies affected by the failure, until he is satisfied that there is no longer any such failure to comply.

(20 U.S.C. 844a(e)(2))

Subpart D—Program Requirements

§ 118.21 Purpose.

This subpart sets forth various program requirements to which each State educational agency shall adhere in administering the educational programs described in its approved State plan and in implementing the provisions of such plan. The policies, procedures, and criteria developed by the State under this subpart shall be set forth in writing and shall be available for inspection at reasonable times and places by the Commissioner or his delegate and by interested parties in the general public.

(20 U.S.C. 843, 844, 844a(a)(1) and (b), 1232c(b))

§ 118.22 General requirements.

The State plan shall provide assurances that the following are formulated and maintained:

(a) *Long-range strategy for advancing education.* The State shall develop a long-range strategy for advancing education in the State in ensuing years through programs and projects funded under the Act. Such strategy shall be directed toward the critical educational needs of the State as periodically assessed under § 118.8(a) of this part, and shall provide for the coordination of Title III programs and projects with other public and private programs and projects as required by paragraph (b) of this section.

(b) *Coordination with other aid programs.* (1) To the extent not inconsistent with the prohibition against commingling of funds in § 118.8(g) of this part, the State shall establish effective procedures for coordinating the development and operation of programs and projects carried out under the Act and these regulations with other public and private programs having the same or similar purposes in accordance with § 100b.275

of this chapter. (2) The State plan and amendments thereto which the State educational agency submits to the Commissioner under § 118.6 of this part, and the periodic reports which it submits to the Commissioner under § 118.53 of this part and Part 100b of this chapter shall first be submitted to the Governor of the State for his review and comments (if any) on the relationship of Title III programs and projects to, and coordination with, State comprehensive plans and State plans in related Federal programs in accordance with § 100b.15 of this chapter.

(c) *State leadership.* The State educational agency shall establish policies and procedures for appropriate professional staff development of State and local administrative, supervisory, instructional, and supporting personnel involved in developing, conducting, or monitoring programs or projects under the Act, including those personnel involved in programs or projects for handicapped children.

(d) *On-site evaluation of projects.* The State educational agency shall develop procedures and criteria for the on-site evaluation, at least annually, of all Title III projects in the State. Such procedures shall indicate the role of the State educational agency staff in the evaluation process and the relationship between its functions under this subsection and the functions of the State advisory council under §§ 118.4(a)(3) and 118.8(b) of this part. Such procedures shall also provide for incorporation of recommendations made as a result of on-site evaluations and for follow-up methods to ensure proper implementation.

(e) *Construction.* The State educational agency shall establish criteria for determining the conditions under which the construction of facilities for use in a Title III program or project is consistent with the educational programs set forth in the State plan and necessary to the efficient operation of the program or project.

(f) *List of projects funded.* The State educational agency shall maintain a list identifying each local project it is funding under the Act, which shall include for each such project: (1) The project number, (2) a title or description by which the project may be easily identified, (3) the amount of the current grant, (4) the proposed level of funding for the portion of the project period remaining after expiration of the current grant, (5) the amount of grant funds to be expended in each project for guidance and counseling under § 118.11 of this part or for testing under § 118.10 of this part, and (6) the amount of grant funds to be expended in each project for the education of handicapped children under § 118.26 of this part, broken down by type of handicap.

(g) *Participation of students in junior colleges and technical institutes.* Participation in Title III programs or projects by students enrolled in junior colleges and technical institutes in a State shall be limited to participation in guidance,

counseling, and testing programs or projects established under §§ 118.10 and 118.11 of this part.

(20 U.S.C. 843(b), 844a(a)(1) and (b)(1)(B)(1) and (ii), (b)(2), (b)(10), 883, 1232c(b), (45 CFR 100b.15))

§ 118.23 Applications for grants.

(a) *Eligible applicants.* A grant may only be made to a legally constituted public local educational agency as defined in § 118.2 of this part and may not be made to an individual, private school, or private nonprofit corporation. Universities and colleges are considered as local educational agencies for this purpose when the following conditions are met:

(1) The college or university has administrative control and direction of a public elementary and secondary school as determined under State law; (2) the college or university is a public agency as defined in § 100.1 of this chapter; and (3) the elementary and secondary school draws its students from the general public and not from a restricted group such as children of the faculty or other employees of the college or university.

(20 U.S.C. 881(f))

(b) *Solicitation and submission.* The State educational agency shall establish procedures to stimulate the submission of applications for funds under the Act by all local educational agencies in the State that have educational needs of the type which the State has identified under § 118.8 of this part. Such procedures shall include (1) the statewide dissemination of information concerning the purposes and provisions of the Act and these regulations, and of the educational program which the State proposes to conduct under its State plan; (2) the establishment of cutoff dates for submission of applications and notifications to all local educational agencies of such dates; and (3) the development of solicitation techniques designed to ensure that Title III funds are equitably distributed as required by § 118.12 of this part, and that applications are submitted by local educational agencies entitled to special consideration under the criteria developed pursuant to § 118.13 of this part. The State shall not establish methods or procedures which have the effect of excluding the eligibility of any otherwise eligible local educational agency to apply for and receive grants under this part, other than those specifically required by this paragraph.

(c) *Content of application.* Each project application submitted to the State educational agency shall set forth a proposal for carrying out one or more of the purposes described in Section 303(b) of the Act in accordance with the provisions of the Act and the regulations in this part. Such applications shall:

(1) Provide that the services and activities for which Title III funds are sought will be administered by or under the supervision of the applicant;

(2) Set forth (i) such methods of administration as are necessary for the proper and efficient operation of the project, and (ii) such fiscal control and

fund accounting procedures as are necessary to assure proper disbursement of and accounting for Title III funds paid to the applicant;

(3) Set forth policies and procedures which assure that funds made available for the project for any fiscal year will supplement and not supplant State and local funds as required by § 118.17(a) of this part;

(4) Set forth, in the case of an application which includes construction as part of the proposed project, the necessary assurances and such other information as the State educational agency shall require in fulfilling the requirements of § 118.22(e) of this part;

(5) Provide for making such financial reports, annual reports, and other reports, and for keeping and allowing access to such records relating thereto, as the State educational agency may reasonably require to assure compliance with the reports and records requirements in §§ 118.53 of this part and part 100b of this chapter and to otherwise carry out its functions under the Act and these regulations;

(6) Set forth the information regarding participation of private school children which is required by § 118.15(d) of this part;

(7) Contain such other information as the State educational agency may reasonably require to apply the criteria for reviewing project applications set forth in § 118.24 of this part.

(d) *Panel of experts.* The State educational agency shall establish a panel of experts, consisting of persons who are not officers or employees of the State educational agency or the State advisory council, to review all local project applications prior to their approval or other disposition. The State educational agency shall determine the number of experts to be utilized and the qualifications to be required of such experts (including one or more experts in the education of handicapped children and one or more experts in guidance, counseling, and testing) and shall establish procedures for selecting the panel.

(e) *Approval of applications.* The State educational agency shall establish procedures for review and disposition of local project applications in accordance with the requirements of the Act and these regulations. Such procedures shall provide for coordination of the roles of the State advisory council (under § 118.4 (a)(2) of this part) and the panel of experts (under paragraph (d) of this section) with the role of the State educational agency. Such procedures shall also assure that no application will be approved or renewed by the State educational agency unless it is specifically found to meet the requirements for participation of private school children under § 118.15 of this part, and each of the requirements of paragraph (c) of this section, and has been evaluated in terms of the criteria set forth in § 118.24 of this part.

(20 U.S.C. 844)

(f) *Hearings.* The State educational agency shall develop procedures for a

hearing in accordance with § 118.8(f)(3) of this part, for any applicant whose application (or amendment thereto) the State educational agency proposes not to approve.

(20 U.S.C. 844 (a), (b), 844a(b)(12), 1232c(b))

§ 118.24 Criteria for review of project applications.

(a) *Supplementary educational centers and services.* The State educational agency shall establish the criteria to be used in reviewing project applications from local educational agencies under § 118.9 of this part. Such criteria shall be applied in conjunction with the special criteria developed by the State educational agency under §§ 118.12 and 118.13 of this part and shall include criteria for determining the extent to which the proposal involves or contains:

(1) Evidence that it is designed to demonstrate solutions to identified critical educational needs and will substantially increase the educational opportunities of children in the area of the State to be served;

(2) Provisions for the development of concepts, practices, and techniques which can be adapted or adopted elsewhere;

(3) Promising concepts or practices recognized as unique, original, unusual, innovative, or exemplary;

(4) Concepts or practices which are economically feasible and effective;

(5) Evaluation strategies and procedures based on valid methodology which will provide evidence of the extent to which performance of the participants is improved;

(6) Performance objectives which are measurable, and appropriate activities which facilitate achieving them;

(7) An awareness of information concerning similar programs, relevant research findings, and views of recognized experts;

(8) Provisions for staff members with professional qualifications adequate to achieve the stated objectives of the project;

(9) Provisions for budgeted expenditures for adequate and appropriate facilities, equipment, and materials which make a direct contribution to facilitating the achievement of the stated objectives;

(10) Documentation that in the planning of the project there has been, and in the operation and evaluation of the project there will be (i) utilization of the best available talents and resources and (ii) participation of students, teachers, parents, school administrative personnel, private nonprofit school representatives, and other persons including those with low income, broadly representative of the cultural and educational resources of the area to be served; and

(11) Provisions for dissemination of information about the proposed project which are appropriate and adequate for the area to be served.

(b) *Guidance and counseling.* The State educational agency shall establish the criteria to be used in reviewing applications for guidance and counseling programs and projects under § 118.11 of this

part. A State educational agency may elect to apply all criteria in paragraph (a) of this section to guidance and counseling programs and projects. However, at least those criteria set forth in §§ 118.12 and 118.13 of this part and those required by paragraph (a)(4) through (11) of this section shall be applicable to all such programs or projects.

(c) *Additional criteria.* If the State educational agency establishes criteria for the review of project applications in addition to those specified in paragraphs (a) and (b) of this section, it shall list such additional criteria in its State plan in accordance with § 118.8(f) of this part.

(20 U.S.C. 844, 844a(a)(1), 1232c(b))

§ 118.25 Innovative and exemplary projects.

The State educational agency shall establish policies and procedures under which it will use at least 50 percent of the funds that it receives to carry out its State plan in each fiscal year to plan for and take other steps leading to the development of innovative and exemplary programs and projects such as those described in section 303(b)(1), (2), and (3) of the Act, including pilot projects designed to test the effectiveness of such plans.

(20 U.S.C. 844a(b)(7))

§ 118.26 Projects for handicapped children.

(a) The State educational agency shall establish policies and procedures which are to be set forth in the State plan under which it will use at least 15 percent of the funds that it receives to carry out its State plan in each fiscal year for: (1) Planning programs or projects referred to in paragraphs (b) and (c) of this section; (2) establishing or expanding innovative and exemplary educational programs for the purpose of stimulating the adoption of new educational programs to demonstrate ways to meet the special needs of handicapped children; or (3) establishing, maintaining, operating, or expanding services or activities which utilize new and improved approaches which demonstrate ways to meet the special educational needs of handicapped children.

(b) The State educational agency shall also establish procedures which assure that such activities will be coordinated with other Federal, State, and local programs and projects for the education of handicapped children, such as Title I of the Elementary and Secondary Education Act (20 U.S.C. 241 *et seq.*), the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*), the Developmental Disabilities Services and Facilities Construction Act (42 U.S.C. 2661 *et seq.*), and

(c) The State shall also establish procedures whereby appropriate State educational agency personnel responsible for the education of handicapped children shall review and make recommendations relating to all parts of the State plan and to all project applications which pertain to handicapped children.

(20 U.S.C. 844a(b)(8), 1232c(b)(1))

§ 118.27 Project period, amendment, continuation costs, and termination of projects.

(a) *Project period.* Subject to § 100b.55 of this chapter, the State educational agency shall establish a project period for projects funded under the Act and shall establish procedures for continuing the funding of promising projects throughout the project period, subject to the availability of Title III funds, on the basis of evaluations under § 118.22 (d) of this part, and other periodic reviews which demonstrate that the project is being operated in compliance with all the requirements of the Act and these regulations. The project period and the procedures shall be set forth in the State plan.

(b) *Amendment of project applications.* The State educational agency shall establish procedures for reviewing requests from grantees to amend project applications and alter projects during the project period and for assuring that such amendments and alterations are fully consistent with the requirements of the Act, the regulations in this part, and § 100b.29 of this chapter. Whenever the proposed amendment or alteration would involve significant changes in the content, design, or funding level of the project, the review procedures utilized shall conform to the requirements of § 118.23 (e) of this part.

(c) *Costs of continuation.* If the costs to the State for any fiscal year of continuing projects under this section would exceed the amount of funds available to the State to carry out its State plan for that fiscal year, the State educational agency may request that the Commissioner provide funds to meet such excess costs under Section 306 of the Elementary and Secondary Education Act (20 U.S.C. 844b) and Part 126 of this chapter. The Commissioner will consider such a request only if he specifically determines that the project requiring funds is worthy of continuation and holds promise of making a substantial contribution to the solution of critical education problems common to all or several States.

(d) *Termination of projects.* The State educational agency shall establish procedures for termination, during the project period, of programs and projects which are not operating in substantial compliance with (1) any provision of the Act and regulations of this part, or (2) any requirement set forth in the approved State plan or in the approved project application. In the event of such termination the grantee shall be afforded reasonable notice of the proposed action and opportunity for a hearing.

(20 U.S.C. 844, 844a(b)(12))

§§ 118.28–118.31 [Reserved]

Subpart E—Fiscal Procedures

§ 118.32 Grant awards.

In all cases where the State educational agency makes grants under the Act to local educational agencies, it shall award such grants for specified grant periods on the basis of applications

which have been approved in accordance with § 118.23 of this part. All grant awards shall be in writing and shall set forth the amount of funds granted and the period during which such funds are available for obligation and expenditure, and shall specify the anticipated length of the project period.

(20 U.S.C. 844(a), 1232c(d))

§§ 118.33–118.40 [Reserved]

Subpart F—Equipment and Construction

§ 118.41 Recovery of payments.

If within 20 years after the completion of any construction undertaken pursuant to a grant under the Act (a) the owner of the facility shall cease to be a State or local educational agency, or (b) the facility shall cease to be used for the educational and related purposes for which it was constructed, the United States shall be entitled to recover all or a portion of the Federal funds used to pay for such construction in accordance with the provisions of section 308 of the Act.

(20 U.S.C. 847)

§§ 118.42–118.50 [Reserved]

Subpart G—General Provisions

§ 118.51 Payment of funds.

(a) From its allotment under section 302 of the Act for any fiscal year, and in accordance with § 100b.53 of this chapter, the Commissioner will pay to each State, either in advance or by way of reimbursement, amounts equal to the sums necessary for current expenditures by the State under an approved State plan for (1) grants to local educational agencies for supplementary educational centers and services and (2) guidance, counseling, and testing programs.

(20 U.S.C. 845(a), 1232d)

(b) The payment of funds under Title II of the Act will be limited to the maximum funding level established by section 305(d) of the Act as described in § 118.18 of this part and the funding of partially approved State plans is further subject to the limitations set forth in § 118.18(b) of this part.

(20 U.S.C. 844a(c), (d))

(c) The Commissioner will pay additional sums to each State receiving funds under paragraph (a) of this section for administration of the State plan; administration of guidance, counseling and testing programs; activities of the State advisory council, and evaluation and dissemination activities. In no case will the amount paid to a State for such activities for any fiscal year exceed an amount equal to 7.5 percent of its allotment for that fiscal year or \$150,000 (\$50,000 in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), whichever is greater. All allowable expenses for administering guidance, counseling, and testing programs or projects under the State plan can only be reimbursed with funds under this paragraph.

(d) Subject to applicable provisions of law, no payment will be made by the Commissioner to a State under the Act for any fiscal year unless the Commissioner determines that the amount of State aid per pupil with respect to the provision of free public education in that State for the preceding fiscal year was not less than the amount of such State aid per pupil for the second preceding fiscal year.

(20 U.S.C. 845(b), (e), 1232d)

§ 118.52 Reallotment.

(a) *General.* The amount of any State's allotment under Title III of the Act for any fiscal year which the Commissioner determines will not be required by such State for the period for which that amount is available shall be available for grants pursuant to section 306 of the Elementary and Secondary Education Act (20 U.S.C. 844b) and Part 126 of this title (special grants made directly by the Commissioner) in such State. If the Commissioner further determines that the amount is not needed in such State for grants pursuant to section 306, that amount may, at the Commissioner's discretion, either be used for grants pursuant to section 306 in other States or reallocated to other States. Funds may be reallocated from time to time, during the period for which they are available, on such dates as the Commissioner may determine, among other States in proportion to the amounts of their respective original allotments for that year, but with the proportionate amount for any of the other States being reduced to the extent it exceeds the sum the Commissioner estimates the respective State needs and will be able to use during the period for which the funds are available. Funds available due to such reductions may be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State from funds appropriated pursuant to Section 301 of the Act for any fiscal year will be deemed to be a part of the amount allotted to it under Section 302 of the Act for that year.

(b) *Statements of anticipated need.* In order to provide a basis for reallotment of funds by the Commissioner pursuant to this section, each State agency shall, if requested, submit to the Commissioner, by such date or dates as he may specify, a statement or statements showing the anticipated need for the funds previously allotted during the period for which such funds are available, or any amount needed to be added thereto by reallotment. Such further information as the Commissioner may request for the purpose of making reallotments shall be reflected in such statements.

(20 U.S.C. 842c)

§ 118.53 Annual and other reports.

Pursuant to the provisions required for approval of the State plan under section 305(b)(11) of the Act and § 118.16 of this Part, the State educational agency shall make an annual report and such

other reports containing such information as the Commissioner may reasonably require to carry out his functions under the Act and to determine the extent to which funds provided under the Act have been effective in improving the educational opportunities of persons in the areas served by programs or projects supported under the State plan and in the State-as-a-whole. The annual report shall include an evaluation made in accordance with objective measurements to determine the extent to which critical educational needs identified in the State plan have been met and an evaluation of the effectiveness of projects funded for that fiscal year under the Act. The State shall also keep such records and afford access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(20 U.S.C. 844a(b)(11))

§§ 118.54-118.58 [Reserved]

GUIDELINES—ESEA, TITLE III, SECTIONS 301-05, 307-08

FINANCIAL ASSISTANCE FOR SUPPLEMENTARY CENTERS AND SERVICES, GUIDANCE, COUNSELING, AND TESTING PROGRAMS

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CHAPTER I—INTRODUCTION

PART 1—GUIDELINES

§ 1.1 Scope of guidelines.

(a) The guidelines contained in this document are recommendations and suggestions for meeting the legal requirements which apply to Federal assistance under the Elementary and Secondary Education Act, Title III, sections 301-308 (excluding Section 306). The legal requirements include the Act (20 U.S.C. 841-844a, 845-49) and the regulations (45 CFR 118). The guidelines are not to be construed as requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon. Projects are not subject to termination proceedings or audit exceptions for conduct which is recommended or suggested in the guidelines.

(20 U.S.C. 1441; 113 Cong. Rec. 5936, 5939 (daily ed. May 23, 1967); *United States v. Jefferson County Board of Education*, 372 F.2d 836, 857 (1966))

(b) Where a guideline is issued in connection with or affecting a provision in the regulations, the pertinent regulation will be cited after the citation of legal authority for the guideline, in the parentheses following the guideline. For example, if the legal authority for the guideline is Section 305(b)(11) of the Act (20 U.S.C. 844a(b)(11)), and the guideline affects § 118.16 of the regulations (45 CFR 118.16), the following citation

will be placed on the line immediately following the guideline: (20 U.S.C. 844a(b) (11)); (45 CFR 118.16). If no particular section of the regulations is affected, no citation to the Code of Federal Regulations (CFR) will be made.

(20 U.S.C. 1232(a))

PART 2—THE PURPOSE AND PROGRAMS OF TITLE III

§ 2.1 Objectives.

The role of Title III of the Act in the improvement of American education is that of demonstrating the feasibility of innovations in a local context. These demonstrations should meet the criteria of having been field tested following research and development phases, usually under the auspices of State educational agencies, universities, foundations, or educational laboratories. They should be exemplary in that they will serve as models for other school systems that may wish to visit or replicate them, and they should hold promise of being economically feasible. In this manner, the Title III project bridges the research-to-practice gap by filling the diffusion role in the change continuum of research, development, diffusion, and adoption.

(20 U.S.C. 841(a))

§ 2.2 Types of programs.

State educational agencies are authorized to make grants to local educational agencies for innovative and exemplary programs and projects which are designed to demonstrate ways of making a substantial contribution to the solution of critical educational problems. Title III grants should be made only to programs or projects which can be replicated elsewhere if evaluation proves them to be an effective approach to solving educational problems.

(20 U.S.C. 841(a))

§ 2.3 Program emphases.

(a) The flexibility of Title III of the Act allows its resources to be focused on virtually any major educational need. Title III can be used as an effective agent to develop strategies for demonstrating exemplary programs to meet assessed needs and for designing innovative approaches that can be replicated by local educational agencies. Title III of the Act furnishes the seed money to produce innovative solutions to critical problems which are of concern to all or several States. In effect, this program offers money to plan and develop new programs, and test their feasibility for innovations as model programs which may be adapted throughout the Nation to meet critical needs of public and private school children.

(b) In making long-range plans for improving education, States have the responsibility for identifying their most critical educational needs with local educational agencies and for encouraging the development of projects which demonstrate highly creative approaches to meeting these needs, with the ultimate aim of promoting widespread adaptation, through other funding sources, of those programs which are judged to be the most promising. Therefore, the aim of Title III is to design and demonstrate creative solutions of major educational problems which affect various States and the entire Nation, rather than to provide direct aid on a massive scale.

(20 U.S.C. 843(b), 844a(b) (1) (A)); (45 CFR 118.9, 118.22, 118.25)

CHAPTER II—STATE PLAN ADMINISTRATION

PART 1—ELIGIBILITY FOR PAYMENTS

§ 1.1 Submission of State plans.

The Title III program in recent years has placed less emphasis on the State's preparing, and the Office of Education's approving a detailed description of the manner in which the program is to be conducted. More emphasis has been placed upon the State's developing a contemporary dynamic process for planning, evaluating, and managing federally supported educational programs. The State plan becomes a set of assurances; except when otherwise required by law, certain provisions which a State is legally bound to follow in the administration of a program must be set forth in the plan on an annual basis. It does not reduce the requirement for a State to develop a thorough and complete plan or to present such a plan in writing. The plan serves as a guide in the administration of any federally supported program. This State-developed management plan should be made available and on file for any person to review.

§ 1.2 Calendar of suggested dates for submitting material to Office of Education.

Name of report	Number of copies	Suggested date due in USOE
Certification of State Advisory Council (20 U.S.C. 844a(a)) (45 CFR 118.3(c)).	1	April 1 of each year.
State Plan (20 U.S.C. 844a(a) (1) (c)) (45 CFR 118.6).	4	May 1 of each year.
State Plan Amendment (20 U.S.C. 844a(a) (1) (c)) (45 CFR 118.6(e)).	4	Allow 30 days for OE to process.
Annual Report (20 U.S.C. 844a(b) (1)) (45 CFR 118.53).	4	October 1, after the end of each fiscal year.

PART 2—STATE ORGANIZATION AND FUNCTIONS

§ 2.1 State advisory council support staff.

Staff members made available to assist the State advisory council may be employed on a full- or part-time basis and may include consultants highly trained in educational areas such as evaluation and statistics. Other support staff may include administrative assistants trained in data collection, editorial assistants, and clerical help. Council members ordinarily will serve on a part-time basis; however, a full-time person may be employed to serve in the capacity of Executive Secretary.

(20 U.S.C. 843(c), 844a(a)); (45 CFR 118.4 (c))

§ 2.2 State agency staffing and functions.

(a) *Staff needs.* The State educational agency staffing patterns for the administration of the Title III State plan may vary from State to State. The number of additional staff members needed will, of course, depend upon the amount of the allotment, the competencies of the present staff, and the kind of program to be developed within the State. In States where small numbers of projects are to be administered, additional staff members may be recruited on a part-time basis, and regular staff members in the agency may be called upon both for service functions and for administration, depending upon the need for their particular proficiencies.

(b) *Staff functions.* In determining staff patterns for the Title III State plan program required by § 118.7(d) of the regulations, the

State educational agency should consider carefully the following:

(1) *Program coordination.* A staff member to oversee the total program and to coordinate the activities of the advisory council and the panel of experts with those of the State educational agency staff will be needed. This person will be responsible for the establishment and management of the staff serving the State advisory council as well as the Title III State educational agency staff, and for coordinating their activities in behalf of the program in the State.

(2) *Program development.* Personnel with expertise in such areas as early childhood education, education of children from minority groups, education of children from rural areas, education in inner cities, treatment of potential and actual dropouts, education of the handicapped, language arts, reading, bilingual education, individualized instruction, curriculum development, and other areas identified by the Statewide assessment of needs will be needed. Such experts may already be on the staff of the State educational agency and, if so, may be called upon as appropriate. Such persons may be employed as full-time staff members to serve the Title III program, or may be employed on a part-time basis as needed. Their assignments might include providing consultation to local educational agencies in the development of projects; planning, developing, and conducting inservice training programs; gathering and disseminating information concerning research and innovation in their field; and serving in an advisory capacity to projects in operation;

(3) *Project proposal review.* Project proposals should be reviewed by persons having recognized expertise in the educational areas proposed for support. Reviewers should be able to judge, in their areas of specialization, whether: (i) a project is an innovation in the field, (ii) the available research has been studied, (iii) the idea is basically sound, (iv) the consultants named are competent in this field, and (v) the project is economically feasible;

(4) *Program operation.* Personnel are important to monitor and supervise the operation of approved projects. Projects may be assigned to personnel on the basis of area of specialization or, in the case of large States, on a regional basis. Such personnel should assist project directors in carrying out the proposed program;

(5) *Evaluation.* The requirements for evaluation both of local project design and of the program at the State level as set forth in § 118.22(d) of the regulations call for staff with expertise in this area. Evaluation specialists may be contracted on a team basis, or they may be a part of the staff. Their functions should be to assist local educational agencies in preparing evaluation designs and in evaluating projects at regular intervals. In addition, they should be called upon to evaluate the effectiveness of the total State Title III program;

(6) *Dissemination.* Personnel with experience in communications are important members of a staff. It should be their responsibility to disseminate information about the preparation and submission of projects, keep the local school districts informed concerning innovations in education, serve as a clearinghouse of educational information, assist local educational agencies in their dissemination efforts, inform school districts and other audiences in the State of successful programs, and maintain an internal communications system in the State educational agency;

(7) *Grants management and finance.* Grants administration personnel who can

maintain such fiscal control and accounting procedures as may be necessary are important to assure proper disbursement of and accounting for Title III funds paid to the State. Their functions include working with program officers to examine items of the project budget and providing technical advice and assistance to local educational agencies in the areas of budgeting, fiscal control, and accounting. Grants administration personnel should also develop a system to ensure that fiscal data are accessible to appropriate units in the State educational agency; and

(8) *Clerical.* A staff sufficient to file and handle all records concerning each project is important. Other assignments including mailing of projects to reviewers, transmitting routine notifications, and handling correspondence and schedules for various staff members.

(20 U.S.C. 844a(a)(1), (b)(2) and (10)); (45 CFR 118.7(d), 118.22)

§ 2.3 Professional development activities.

(a) Staff development programs are essential to the effective and efficient administration

of the Title III program as set forth in § 118.8(e) of the regulations. Although the specific activities are dependent on individual State staff training needs, the following are examples of criteria that could be used to determine the adequacy of professional staff development activities at the State level under Title III: (1) The extent to which the State educational agency is already committed to providing the staff with development opportunities; (2) the extent to which development opportunities show clearly stated objectives which are directed toward the needs of the staff; (3) the adequacy of the total staff development program; (4) the extent to which the development program is evaluated to determine its effectiveness; and (5) the extent to which the development program involves appropriate State staff in addition to those working under Title III.

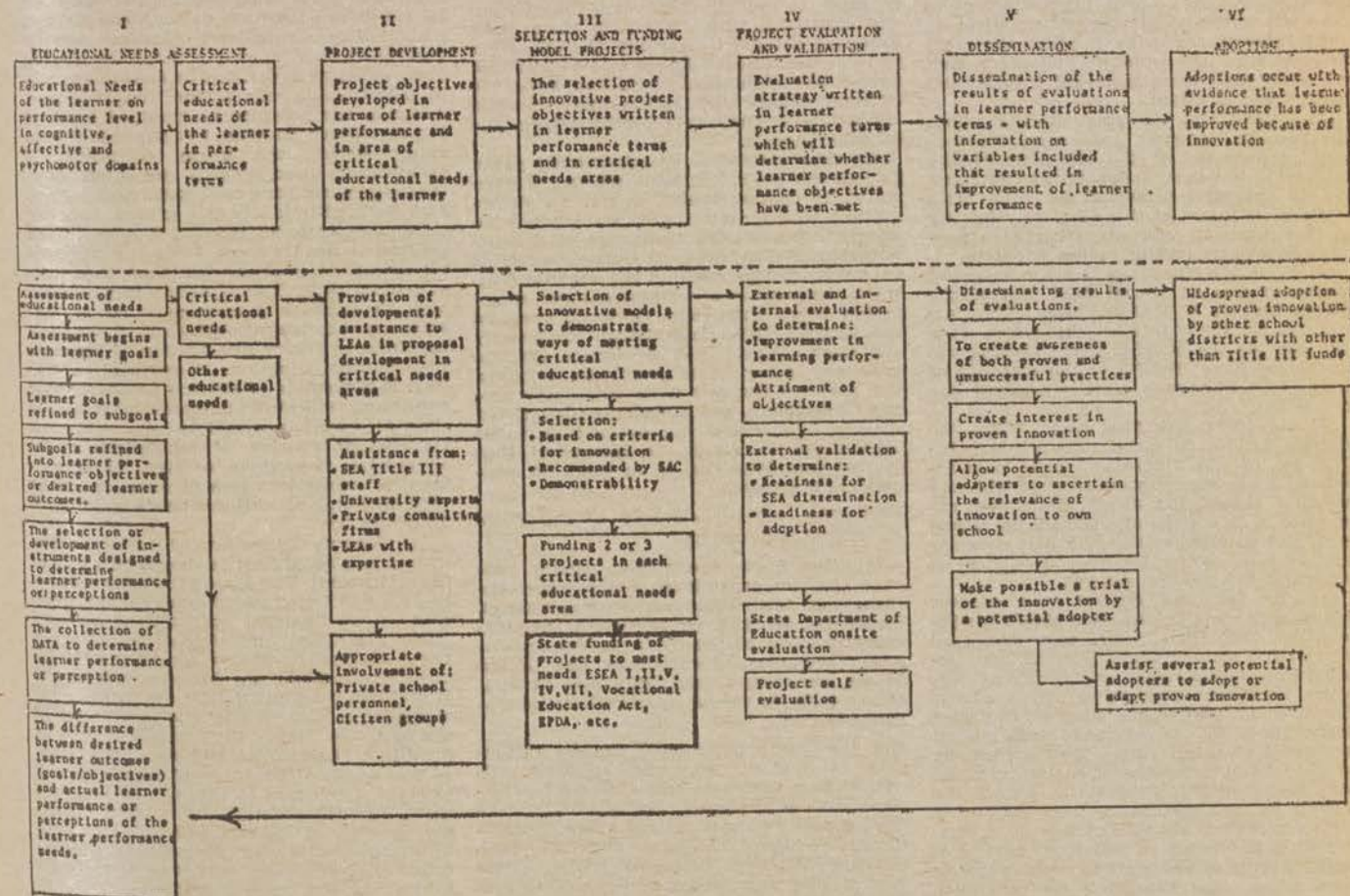
(20 U.S.C. 844a(b)(2)); (45 CFR 118.8(e))

(b) Since substantial consultant costs have been incurred by many Title III projects, it is important in the interest of effective

control and better evaluation of consultant services that reports of such consultations be prepared and that results of consultations be documented in the grantee's project records. It is recognized that the selection of consultants by grantees may vary by purpose as well as by the length of time a consultant is hired, and that these matters have a bearing on the extent to which the consultations can be documented. For example, one consultant may be hired for the evaluation of a Title III project and receive fees for several days' work; whereas another consultant may visit a project for one day only to discuss strategy and problems with staff members. In the first example, the grant records should include a formal written report from the consultant (an evaluation). In the second example, the grantee should prepare a memorandum concerning matters discussed with the consultant and should file the memorandum for the record.

(20 U.S.C. 844(a)(5)); (45 CFR 118.23(c)(5))

2.4 Model of operation.



(20 U.S.C. 843(b), 844a(b)(1)(A), (6)); (45 CFR 118.8)

PART 3—THE STATE EDUCATIONAL AGENCY AS FACILITATOR OF EDUCATIONAL CHANGE UNDER TITLE III.

§ 3.1 Change and the role of the State agency.

(a) One of the primary functions of the State educational agency under Title III of the Act is to effect change in education which is relevant to valid educational and social goals. The Title III program is a vital part of the State educational agency's effort to effect such change in schools throughout the State.

(b) Most educational changes are not simple adoptions of a solution developed elsewhere, but are adaptations of the school to the innovation and of the innovation to the school. This means that it is vital to know both the essential conditions for the innovation to succeed and the unchangeable constraints within the school, so that any adaptation made in the innovation may actually result in educational improvement, rather than in maladaptation.

(c) In examining school districts to see which will be the most responsive to innovations, the State educational agency may wish to use the following criteria:

(1) *Initiating mechanisms*, the continuing flow of new knowledge into the school district from outside sources. This new knowledge may flow through print or other mass media, through training programs, through professional meetings, or through interpersonal communication with persons outside the school district;

(2) *Sustaining mechanisms*, or the capability of the school district to respond to and act upon such new knowledge. These mechanisms are within the school district, itself, and are relatively impervious to manipulation by outsiders. Among the internal conditions which will influence the ability of

the school district to change are (i) the degree of commitment and support for high quality educational programs within the community, (ii) the degree to which the school district demonstrates "openness," or willingness to perceive problems and to make use of information from outside sources, (iii) the degree to which there is open communication between administrators and teachers about task-related matters, and (iv) the degree of flexibility there is in school budget; and

(3) *Performance feedback transmissions*, which are dependent on the clarity and measurability of objectives of the school district and the nature and degree of communication concerning desired goal attainment within the schools. Clearly related to this, of course, are similar communications about the effect of any trial innovation on goal attainment;

(d) Adopters of innovations tend to go through a series of five stages culminating in adoption. Rejection of an innovation may occur at any point in the process. These stages are as follows:

(1) *Awareness*, the point where the potential adopter learns of an innovation, or of some alternative to his current practice;

(2) *Interest*, the stage in which the more innovative of the potential adopters seek out additional, more technical information about the innovation;

(3) *Evaluation*, the stage during which the potential adopter makes an "in-the-head" assessment of the relevance of the innovation to needs, to apparent advantages, and to potential problems for him. Most potential adopters at this stage rely heavily on interpersonal communication with program developers and/or earlier adopters;

(4) *Trial*, the stage in which the potential adopter makes an actual field test of the innovation on a limited basis. The late adopters are likely to omit this stage, since they can see the benefits that adopting the innovation have brought to the majority of their peers who have already adopted the innovation; and

(5) *Adoption*, the final stage, when the adopter decides to make full-scale continuing use of the innovation until it is replaced by a better program. In both trial and adoption stages, the direct, first-hand experience of an adopter and the advice, assistance, and encouragement of expert consultants or even earlier adopters are the most important information sources.

(e) To facilitate change, the adopter should seek more information about the innovation, then turn toward more technical information sources which provide more detailed information, such as government bulletins, integrative reports, or expert advice. The more innovative the adopter, the more likely he is to use technical information sources; the less innovative, the more heavily he will rely on interpersonal communication, particularly with individuals he knows and believes to have more expert knowledge.

(f) Innovators should not rely on attractive color brochures or individual reports of Title III projects which are so popular among most educational dissemination personnel. They are useful for little more than making others aware of the existence of an innovation. Such information is unconvincing for those same potential adopters as they move closer to evaluation, trial, and adoption of the new practice, and may even be misleading.

(g) If a State educational agency is to facilitate the spread of improved educational practices, it is important that it tailor its strategy and activities to the actual conditions and constraints in the local school districts. The following are constraints that the State educational agency may face:

(1) *The pluralistic nature of the decision-making process in American public education*. The pluralistic system of decision-making in American government reflects American values, but it does make the problem of system-wide educational change slower and more difficult; there is no single locus for making and implementing educational decisions. An innovation is likely to be adopted if the adopting unit—be it a person or an organization—perceives greater relative advantage through adoption of the innovation than in continuing current practice. Most changes of any significance involve a number of congruent decisions in different loci: Policy decisions by the school board, management decisions by superintendents and principals, subject matter decisions by supervisors, and implementing decisions by each classroom teacher involved. However, one fact stands out: unless the superintendent, who can allocate resources and influence behavior, is supportive of innovation, it probably will not occur. It is important, therefore, that superintendents of schools continuously encourage activities which will better meet local needs. Every effort should be made to provide them with information and assistance which will help them make informed decisions regarding the allocation of resources. Efforts should also be made, of course, to communicate with and assist the decision-makers and implementers at other levels, who are necessary participants in the adoption process.

(2) *The statement of educational goals*. Educational goals, like many others, are often stated in unmeasurable terms. In determining whether an innovation should be adopted, the relative advantage of the innovation is compared to current practice in terms of the goals of an organization. When the goals are not stated in clear, measurable terms and when there are conflicts among goals, it becomes difficult to identify any clear advantage in any single practice over any other. This condition suggests the need for the formulation of more precise, operational, and attainable educational goals if educational improvement is to be determined. It should be recognized that explicit goal definition is, in itself, an educational innovation.

§ 3.2 The unique resources of the State educational agency.

(a) The State educational agency possesses certain capabilities which assist the agency in facilitating educational change. Underlying all other consideration, the statutory position of the State as the responsible agent for education in the United States mandates a leadership role in educational improvement by the State educational agency.

and the job opportunities in the various fields. Also, it will encourage students with outstanding aptitudes and abilities to complete their secondary school education, take the necessary courses for admission to institutions of higher education, and enter such institutions. Such programs shall include occupational information and counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education, and may include short-term training sessions for persons engaged in guidance and counseling in elementary and secondary schools, junior colleges, and technical institutes in the State.

(b) Guidance and counseling services under the State plan shall be provided by qualified counselors through appropriate individual and group processes. Such processes shall be coordinated with other pupil personnel services and guidance and counseling resources both within and outside the school

setting, and shall include referral assistance, working with other staff members in planning curriculum content and changes, and consulting both teachers and parents with regard to the learning and developmental needs of pupils.

(c) The program set forth under paragraph (a) of this section shall make provision for supervision and leadership activities by the State educational agency with regard to the establishment, maintenance, and improvement of guidance and counseling services. Such activities shall include the assessment of other Federal and State programs (such as Titles I and V of the Elementary and Secondary Education Act) the State educational agency in many cases, as the major source of assistance in formulating educational policy. Through the types of communications it provides to the Governor and the State Legislature, the State educational agency can assure the development of sound, rational State policy on education and provide the intellectual basis for the policy-makers to make fiscal and other decisions which permit implementation of that policy.

(3) The State educational agency may use its regulatory function to facilitate change. Although the regulatory function can be performed in a manner which is deadening and inhibiting, it can also be used as a means of encouraging educational improvement. Assuring the presence of qualified teachers is a regulatory function, but one that should assure better, not worse, education. If certification requirements are used as a means of preventing trial and assessment of staff differentiation in the schools, this can inhibit educational change. However, such inhibition results more from the way the regulation is implemented than from the standard, itself. The regulatory function can also be used to encourage more explicit statements of educational goals at the local level and to assure justification of proposed new courses of action. If exercised in this way, it is possible to develop procedures for regulating educational improvement rather than for blocking it and to have guidelines for further waiving of regulations under appropriate conditions, or even for amendment of regulations in a manner consonant with changing educational needs under Title III of the Act.

(4) The role of the State educational agency in educational finance should be a powerful instrument. The State's financial authority will not foster educational change, however, if all financial transactions between State and local educational agencies are based on formula grants. Most Title III innovations involve some degree of risk taking. It requires the potential for acquiring or reallocating money for trial and installation of changes. The State can facilitate change by providing risk capital and fiscal flexibility, as well as incentives for local schools to seek changes which lead to educational improvement. In such programs, it is highly advisable to require commitment of local funds to the innovative effort from the very beginning, with increasing allocation of local resources as the project progresses. Data in both education and other fields show that an innovative program which involves the use of local monies from the beginning is more likely to be installed than one which receives full funding from outside sources.

(5) Because of the State educational agency's intermediate position between local and national resources, it can have a great impact on local change processes through the information regarding innovation which it transmits to local schools, and its role as a linker agent in matching needs and resources. To

perform this function effectively at intervals and in forms which are timely and useful, the State education agency should continuously keep abreast of proven practices in education. The agency's linker role can be established through a State educational agency information center which links distant resources to local needs. Without such a center, State dissemination efforts are likely to be intermittent, unfocused, and only partially effective. The State agency should set up an information system under Title III of the Act which provides for:

(i) Comprehensive, up-to-date, practical, and accessible information. Often, information seekers make first and most frequent use of the most accessible information source, even when that source may not provide the best information.

(ii) Information tailored in format and content to the requirements of persons who have different educational roles and who are at different stages of the adoption process. Unless the State's information program is based upon continuing assessment of the characteristics and needs of its users, it will be a waste of money and effort. The following table suggests information relevant to each stage of the adoption process:

Stage	Questions	Needed information
Diagnosis.....	How am I doing?	Current performance data.
Awareness.....	How can I do better?	Alternative solutions to my problem.
Evaluation (pretrial.)	Will it work for me?	Settings and conditions where the innovation succeeded or failed.
Trial.....	How can I do it?	Sources of expert assistance. How to adapt to local conditions.
Evaluation (posttrial.)	How did I do?	Comparative effectiveness of old and new practices.
Installation.....	How must I change?	Needed resources and actions to make the innovation work operationally.
Maintenance.....	How do I continue?	Resources and actions needed to continue and modify the innovation.

(iii) Effective two-way communication between the school and the community and in time looks toward regulations which mandate increased efforts toward such communication. Since community concern for and participation in educational dialogue enhances the innovativeness and responsiveness of schools, the State educational agency, in its leadership role and in its provision of staff services to elected State officials, should emphasize this dialog.

(iv) In its leadership its regulatory role, the enhancement of improved performance feedback transmissions within and between school districts. As part of its leadership role, the State educational agency should communicate to local districts means of defining goals operationally and methods of assessing the degree of their attainment. In some cases, it may even be possible to stimulate statewide participation in development of model educational objectives. As a regulator, the State educational agency may require operational specification of objectives in proposals for Federal or discretionary State funds; it may require by regulation that participation in certain State programs be based upon operationally stated objectives, or it may offer incentives for provision of undisputable evidence of satisfactory performance.

(v) Communications to the State legislature in performance-oriented terms whenever possible and offers assistance in formulation of legislative proposals for improved goal definition and performance assessment in education.

(20 U.S.C. 843(b)(4), 844a(a)(1), (b)(1)(B)(i) and (ii), 883); (45 CFR 118.22)

PART 4—ASSESSMENT OF EDUCATIONAL NEEDS § 4.1 Planning for a needs assessment.

(a) An educational needs assessment under Title III of the Act is a technique for identifying those educational objectives which most need to be accomplished in a given instructional situation. This concept of educational needs assessment provides for (a) the identifying of a desired learner outcome and (b) the ascertaining of the learner's current status with respect to that outcome. The educational needs constitute the difference between the current status and the desired status. The following illustration represents this concept:

DESIRED LEARNER OUTCOMES minus CURRENT LEARNER STATUS equals AN EDUCATIONAL NEED

(b) The assessing of educational needs should be learner-oriented, focusing on the behavioral needs of children in the cognitive, affective, and psychomotor domains. Such needs assessment is important for making any significant improvement in educational outcomes and should be carefully planned and implemented with both short- and long-range objectives.

(c) Planning for a needs assessment is a departmentwide effort. The Title III monies may be combined with State and local monies to finance a needs assessment representative of all groups of persons who will be users of the needs assessment results and all persons whose specific skills will be useful in conducting the needs assessment studies should participate in the planning. It is suggested that they include:

(1) Appropriate representatives of State educational agencies, including persons responsible for administering State and federally supported programs, and those responsible for administering programs in the education of the handicapped; (2) appropriate representatives of the U.S. Office of Education; (3) appropriate representatives of local educational agencies; (4) representatives of professional organizations; (5) appropriate consultants (e.g., university-based evaluation specialists); (6) representatives of school boards of education; (7) representatives of State advisory councils for Title III; (8) representatives of State boards of education; (9) appropriate legislators and their staff consultants; and (10) representatives from private nonprofit elementary and secondary schools.

(d) Sufficient funds should be allocated to adequately accomplish a comprehensive educational needs assessment, and lines of communication and responsibility should be clearly established. Financial resources necessary for planning and implementing a needs assessment might come from a variety of State and Federal sources in addition to Title III funds. The possibility of a cooperative effort among State educational agencies in planning for needs assessments, including a pooling of financial resources, should be explored.

(e) Other resources contributing to the planning and implementing of a needs assessment should include personnel from various agencies, and representatives of private nonprofit elementary and secondary schools, and special ad hoc groups which in the past had been especially concerned with needs assessments, existing strategies used in needs as-

sessments, literature related to the subject, both technical and popular, and existing sources of data. A needs assessment should refer to a variety of data sources with special attention given to timeliness, accuracy, and manageability (accessibility and usefulness) of data.

(f) Special competencies in system design, survey research design, statistics and measurement theory, sampling, and data processing is important in the planning stages. Special competencies in developing behavioral objectives, survey research, statistics, sampling, and data processing is also important in conducting the assessment.

(g) A commitment to the needs assessment and its potential results should be obtained from the Department, the Chief State School Officer, the Title III State Advisory Council, the State Board of Education, and appropriate representatives of private nonprofit elementary and secondary schools. It might be desirable to have a needs assessment steering committee to monitor, review, and revise strategies on a regular basis. Planning should include the means to facilitate reliability and validity checks of data collected and the means to make these data available to decision makers.

(h) A strategy for a needs assessment should be sufficiently constructed so as to consider all of the important elements and should include development and/or selection of learner goals and objectives, design of instruments for data collection, and determination of a means for precise analysis of data. The entire range of the student's achievement in all areas of learning should be included in the assessment of student needs. This would provide for student success as well as student deficiencies. The overall concept of the assessment of the students' educational needs would then consummate the difference between the current status of the learner and the desired learner outcomes. If particularly successful programs can be identified, the assessment strategy might provide alternatives to meet particular needs in a diffusion adoption process.

(i) The assessment strategy should include both long- and short-range goals and objectives that are behavioral, measurable, and representative of cognitive, affective, and psychomotor domains. A specification of the length of time required to achieve a specific goal or to reach a given objective and a set of objectives for each activity (time-frame) should be stated. Specific activities should be designed for the achievement of each goal and objective which are sufficiently refined to measure student learning.

(j) State educational agencies that have already established learner goals for their educational needs assessment should use these goals as a basis for developing subgoals and then use learning objectives as a basis against which needs can be delivered. Other States that do not have established learner goals should first establish goals before proceeding with the needs assessment effort. An example of the education goals and the related general objectives of one State educational agency include:

(1) To accumulate knowledge.
(i) Subgoals: (a) Develop a general education background in oral and written English, in the use of numbers, natural sciences, reading, mathematics, and social sciences; (b) develop a fund of information and concepts; (c) develop a knowledge of political principles and their evolution; and (d) develop special interests and abilities.

(ii) Learning Objectives: To develop fundamental intellectual skills: (a) By learning to get adequate meaning with reasonable speed from printed materials; (b) by learning to spell correctly the commonly used

words; (c) by learning to express facts in reasonably correct and clear language, orally and in writing; (d) by developing habits and skills in clear thinking; and (e) by acquiring reasonable speed and accuracy in fundamental arithmetical processes and in the ability to solve quantitative problems.

(2) To better the interrelationships of peoples.

(i) *Subgoals:* (a) Developing respect for cultural heritages of other peoples of the world; (b) develop an appreciation for and an understanding of other people and other cultures; (c) develop an understanding of political, economic, and social patterns of the rest of the world; (d) develop awareness of the interdependence of races, creeds, nations, and cultures; and (e) develop an awareness of the processes of group relationships.

(ii) *Learning Objectives:* To lay the basis for intelligent citizenship: (a) By developing ideals and attitudes favorable to political, economic, and social democracy; (b) by developing appreciative cooperative attitudes toward others of different national and racial origins and to other countries; (c) by gaining an understanding of the simpler facts and an appreciation of community, city, State, and national governments; and (d) by acquiring familiarity with and appreciation of the more important facts and lines of development in the history of our nation.

(3) To develop character.

(i) *Subgoals:* (a) Developing moral responsibility and a sound ethical and moral structure; (b) develop an understanding of moral behavior; (c) develop the student's capacity to discipline himself to work, study, and play constructively; (d) develop a moral and ethical sense of values, goals and processes of free society; and (e) develop standards of personal character and ideals.

(ii) *Learning Objective:* To assist in the formation of a high degree of social character and responsibility including moral and ethical concepts, attitudes, and habits: (a) by developing ideals, habits, and attitudes of fair dealing, cooperation, responsibility, respect for the rights of others, and self-reliance; and (b) by developing prejudices against such attitudes and habits as lack of cooperativeness, excessive selfishness, dishonesty, unwillingness to assume responsibility, etc.

(k) Learner goals can also be developed along more general lines such as those of another State educational agency which include the following: (1) The inquiring mind exemplified by a continuing desire for knowledge, a continuing interest in current problems, and the habit of weighing alternatives and creatively applying them to the solution of these problems; (2) a knowledge of fundamental concepts about the world environment and man's relationship to it; (3) proficiency in the use of modes of communication; (4) a dedication to the task of improving America, striving for solutions to its continuing domestic and world problems and upgrading the lives of all people; (5) maintenance of health, achievement of a high level of personal fitness, and the acquisition of wholesome leisure skills; (6) an emotionally stable person; (7) a moral standard of behavior; (8) a knowledge of the interrelationships of nature and the cultural arts and the ability to utilize all of the senses to make aesthetic judgments about the total environment and to enrich his own life; and (9) information and guidance for wise occupational choice.

(l) The needs assessment strategy should include provisions for collecting appropriate information on specific subpopulations about student learning objectives in three categories: (1) Perceptions of the community (including business and industry) educators, and the learner, with regard to the relevance and importance of these objectives; (2) cri-

terion-based test instruments to determine the extent to which student learning objectives have been achieved; and (3) relevant demographic data about the learner.

§ 4.2 Collecting data.

(a) The assessment should provide for instruments to collect data of three different types: The statements of objectives themselves; the criterion-referenced tests designed to measure the extent to which the objectives have already been achieved; and instruments designed to measure the perceptions of relevance and importance by different groupings of students and so-called consumers. In addition, the needs assessment strategy should include provisions for collecting appropriate information on specific subpopulations rather than for all respondents, regardless of background. Where it is appropriate to do so, data collection instruments should be field tested thoroughly on a pilot basis prior to actual use. The procedures for analyzing data should be thoroughly tested to determine if all data collected can be appropriately utilized and treated. Both reliability and validity should be built into the strategy design for assessing needs to aid in determining if the State is accurately and consistently measuring what it purports to measure in the needs assessment strategy.

(b) In collecting data, the specifications of actual procedures used must wait upon adoption of an overall strategy. The analyzing of such data is a highly technical function in statistics and data processing which can be spelled out only after comprehensive plans have been adopted for the needs assessment. Provisions should be made to assure that data collected are manageable and current, and that conclusions drawn from the interpretation of data can be supported.

(c) The translation of information into critical educational needs requires a distinction to be made between collecting information to be used in making decisions and between the decision making process itself. Logical and defensible procedures should be established for determining the criticalness of educational needs identified by data for the State as a whole and for each school district of the State. It may be that to the development of a strategy for making a needs assessment should be added a strategy for increasing the likelihood that the information will, in fact, be used. In addition to using the data for planning the Title III program, a State agency may determine that other institutions and agencies are potential users of the assessment results and, therefore, it is desirable to determine which are responsible for meeting various needs. At the State level, the State educational agency should be responsible for providing statewide results to the State Board of Education and, perhaps, for recommending courses of action based on an interpretation of results.

§ 4.3 Criteria for determining adequacy of needs assessment.

(a) The following criteria are suggested for use in determining adequacy of State provisions for the educational assessment of learning needs under the Title III program:

(1) *Planning, Management, and Resources*
(i) The personnel involved in the program are knowledgeable about evaluation, systems design, survey research, statistics and measurement theory, sampling and data processing techniques.

(ii) Sufficient funds have been allotted to adequately accomplish a comprehensive educational needs assessment.

(iii) There has been departmentwide involvement in the planning.

(iv) Lines of communication and responsibility are clearly established within the State educational agency and with representatives of private nonprofit elementary and secondary schools of the State.

(v) The Department, the Chief State School Officer, the Title III State Advisory Council, and the State Board of Education are committed to the needs assessment and its potential results.

(2) Strategy.

(i) The overall concept of educational needs assessment defines an educational need as the difference between the current status of the learner and the desired learner outcomes.

(ii) The assessment strategy includes both long- and short-range goals.

(iii) The strategy includes specific activities which have been designed to achieve each objective included in the strategy.

(iv) The strategy includes a time frame for accomplishing each activity.

(v) The strategy is sufficiently constructed so as to consider all the required elements.

(vi) Student learning goals are established for the purpose of determining children's needs through the educational needs assessment.

(vii) The student learning goals are behaviorally stated and representative of cognitive, affective, and psychomotor learning.

(viii) The student learning goals are sufficiently definitive to make them measurable objectives for student learning.

(ix) The strategy includes the elementary and secondary grade levels which will be assessed.

(x) The strategy (includes provision for

(x) The strategy includes provisions for collecting data about student learning objectives into three categories:

(a) *Perceptions* of the community (including business and industry) educators, and the learner, with regard to the relevance and importance of these objectives;

(b) *criterion-based* test instruments to determine the extent to which student learning objectives have been achieved; and

(c) *relevant demographic* data about the learner.

(xi) The strategy includes provisions for a data sample from which validity can be determined; i.e., we are measuring what we purport to measure.

(xii) The strategy includes provisions for a data sample from which reliability can be determined; i.e., we are measuring accurately and consistently.

(xiii) The needs assessment strategy includes provisions for collecting appropriate information on specific subpopulations.

(xiv) The strategy includes provisions to assure that the data collected are manageable and current.

(xv) The instruments which are designed to collect data have been tested thoroughly on a pilot basis.

(xvi) Procedures for analyzing data have been thoroughly tested to determine if all data collected can be appropriately utilized and treated.

(xvii) The conclusions drawn from the interpretation of data can be supported.

(xviii) There are logical and defensible procedures established for determining the criticalness of educational needs identified by data for the State as a whole and for each distinct area of the State.

(xix) A listing of critical educational learner needs which are representative of cognitive, affective, and psychomotor learning is given.

(20 U.S.C. 844a(b)(1)(A)); (45 CFR 118.8)

PART 5—PROJECT DEVELOPMENT

§ 5.1 State assistance to local project development.

(a) In the Title III programs, the State educational agency provides leadership in developing school programs within its State. So it is logical that the State educational agency, seeing areas of need and potential areas of development within its State, would encourage local educational agencies to initiate innovative Title III project proposals.

(b) In its role as stimulator, organizer, and coordinator, the State educational agency may provide staff, including specialists in all curriculum and service areas, to help local schools develop sound proposals. Title V of the Elementary and Secondary Education Act can help provide the necessary funds if they are requested as part of a general effort to strengthen the curriculum program of the State.

(c) Since some local school districts have full-time personnel with expertise in educational research who may devote their entire efforts to the study and to the development of proposals, these districts would be likely to submit high quality proposals. To help local educational agencies that do not have staffs with needed capabilities, States might wish to implement procedures such as the following:

(1) Provide a team of consultants either from within the State educational agency or from some other agency to help local educational agencies in particular regions; and

(2) Fund planning grants which would provide local educational agencies with research teams that could offer intensive in-service training in new educational ideas to local staff members.

(d) Conduct local and regional workshops at frequent intervals for school personnel on such topics as translating educational research into practice, solving problems in curriculum change, examining successes and failures in initiating innovations, and studying evaluation designs and methods.

(20 U.S.C. 844a(b) (7)); (45 CFR 118.25)

PART 6—EVALUATION

§ 6.1 Overview of evaluation.

The most successful management of a title III project by a director and a team of specialists involves an evaluation which is the process of gaining and interpreting specific information to assess the degree to which the project objectives have been achieved. The task of designing the evaluation plan is both complex and multifaceted. Each component and the total project should include the evaluation of the product, the operational process, and management process goals.

§ 6.2 Purpose of evaluation.

The purpose of such evaluation is to determine how well each component and the entire project function within the established framework of time, cost, and objectives. A well-planned and -operated evaluation system should result in information which communicates clearly whether the standards of performance specified in the objectives have been met to a degree greater than, equal to, or less than the predetermined standards and why. This process enables the project staff to make the most effective and relevant decisions, and thus to provide the best possible assurances for project success by obtaining, maintaining, and interpreting accurate, up-to-date bodies of information relevant to project development, project implementation, and project successes and/or failures.

§ 6.3 Staffing of evaluation.

One primary management responsibility is that the project director oversee the design

and implementation of the evaluation plan. Many local educational agencies will find it necessary to hire consultants or to seek the help of an outside technical assistance group for the planning, installation, or operation of the evaluation system, particularly if the program requires newly developed instruments and/or techniques.

§ 6.4 The evaluation process.

Evaluation may include delineating, collecting, and interpreting information for distribution to those involved in the decision-making process. In delineating information, one should clearly outline and specify the kinds of data being sought in terms of content, scope, reliability, validity, and appropriateness and relevancy of source; in collecting information one should gather and compile all available data from established parameters with precision and put in usable form; the interpreting of information gathered involves explaining the statistical and educational significance in a form that is understandable by those to whom the report is directed. Distributing this information entails providing appropriate and necessary written reports to those involved in the decision making process.

§ 6.5 Elements of evaluation.

(a) *Stating goals.* Stating major project goals in objective measurable terms is often the most difficult part of an evaluation design. Each major project goal should be broken down into more specific objectives. Specific objectives should be stated for each major project goal and might include: concepts or ideas to be learned; sensitivities and feelings to be developed; ways of thinking to be reinforced, strengthened, or initiated; or habits and skills to be mastered. It is suggested that applicants follow the generally accepted practice of stating specific objectives at the cognitive, affective, and psychomotor levels. Cognitive objectives relate to knowing, comprehending, applying, analyzing, synthesizing and evaluating; affective objectives relate to feeling, valuing, organizing, responding, etc., and psychomotor objectives relate to initiating, manipulating and articulating in a precise manner.

(b) *Standards for evaluation.* An important aspect of an evaluation design is the identification of specific activities, procedures, or techniques which will be used to attain each specific objective. Techniques should, to the extent possible, be varied, innovative, and in keeping with the objectives of the proposal. The specific method and standards for each specific objective to be used in evaluating that objective should also be stated. Examples of evaluative criteria might be: pupil attainment on questionnaires and surveys; teacher attitudes on questionnaires and surveys; pupil scores on paper-and-pencil tests of either the teacher-made variety or the standardized subject matter variety; direct observation of learners; random questioning of students; and pre-post testing.

(c) *Collection of data:*

(1) *Baseline Data:*

(i) The first steps in collecting information are to obtain the data needed to identify a need, define the problem and suggest directions in which solutions might be sought. The evaluator should indicate whether data currently available in the school system, such as school attendance figures for the previous year, will be used or whether data will be provided through the first administration of the measurement instrument. This data can become part of the baseline data needed for comparisons after the new program has been implemented. (ii) An important step in the baseline data collecting process is an analysis of the basic environmental factors involved, such as: (a) The

environment in which the present problem occurs and that in which the proposed solution will operate; (b) the significant elements or variables in the environment or in the program which show promise of producing educational change; and (c) the direction in which the anticipated changes will occur. (iii) The process of establishing baseline data is a task of some magnitude and requires skill on the part of project planners. Questions of appropriateness of objectives, recency of collection, sensitivity or responsiveness to short-term change, reliability and objectivity of data, and comparability of data-gathering situations are some of the considerations which program planners must take into account as they formulate their evaluation designs.

(2) *Procedures for collecting data.* (i) The specific activities, procedures, or techniques designed to attain each specific objective should be stated. The formation of the evaluation design is inextricably linked to the development of performance objectives. If performance objectives have been developed properly both for product outcomes and for operational and management processes, a major part of the task has been accomplished. The conditions of measurement and the minimum levels of acceptable performance will have been specified within the objectives. (ii) The plan for the collection of evaluation data should cover the appropriate budget period and should include the complete evaluation schedule, the target populations to be measured, those responsible for arranging and administering the measurements, and any conditions of measurement not specified in the objectives. Procedures for the selection and training of testers, observers, or interviewers should be described. Charts and diagrams may prove to be helpful tools in the planning and organization of data collection procedures and in the coordination of these procedures with the plans for periodic reviews of the data by the independent educational auditor.

(3) *Instruments for data collection and the baseline data needed.*

(i) The evaluation instrument for each objective should be identified and described briefly. Standardized tests, questionnaires, rating scales, interviews, observation schedules, and interest inventories may be among the instruments selected. It is of critical importance that the instruments be matched as closely as possible to the objectives and that the validity and reliability of each instrument have been ascertained prior to its use. If new instruments are to be developed, a plan for their design and pretesting should be included. (ii) The baseline data requirements should be considered as the instruments are selected, since the validity of the evaluation process may be affected if the appropriate prerequisite data on the target population are not secured or available at the beginning of the program. Baseline data on ability and achievement levels, socio-economic status, attitudes, and other characteristics of project participants will be needed in most cases for accurate measurement of the attainment of project performance objectives.

(4) *Time lines for data collection.*

A calendar should be developed for the evaluation schema that would include the following elements: (i) *Evaluator's report date.* The completion date for the evaluation report for each objective should be given; (ii) *Date instrument will be completed.* If the instrument is to be developed locally, the projected date of completion should be provided; (iii) *Scheduled dates.* The dates for the administration of evaluation instruments should be specified; (iv) *Schedule.* Projected dates of dissemination activities, of evaluation findings, and/or frequency of

activities should be indicated; and (v) *Recipient/audience*. Projected recipients of the evaluation findings (residents of the target area, school district, professional educational groups, etc.) should be indicated.

§ 6.6 Stages of the evaluation process.

The stages of the evaluation process should include: Baseline evaluation, process evaluation, and product evaluation.

(a) *Baseline evaluation* may be defined as the delineation, collection, interpretation, and distribution of all information needed (1) to establish data bases which provide input into needs assessment activities (those activities which result in a clear knowledge of the educational needs of the agency in which a Title III project will be developed); (2) to provide a benchmark against which to measure future successes and/or failures of project activities; and (3) to furnish data for identifying, describing, and defining the context within which change is expected to occur as a result of project activities. In effect, baseline evaluation provides that kind of information without which it would be impossible to measure any progress made toward meeting project objectives. Such information describes conditions as they exist before project treatment; and unless these conditions are accurately described before project implementation, it will be impossible to describe changes effected by project implementation. Baseline evaluation is, therefore, essential to the overall evaluation process; and every care should be taken to ensure that information gained during the baseline evaluation process is valid, appropriate and well-documented.

(b) *Process evaluation* aids management in making day-to-day operational decisions. Essentially, process evaluation may be defined as the delineation, collection, interpretation, and distribution of information needed to make decisions which will keep project resources and activities directed toward fulfilling project objectives. Thus, process evaluation assesses the fulfillment or nonfulfillment of those key steps which, having been carefully planned during project development, are being taken to meet project objectives. The result of such assessment should be information which will permit project management to make decisions regarding subsequent courses of action to be taken, and resources to be used, toward fulfillment of project objectives.

(c) *Product evaluation* may be defined as the delineation, collection, interpretation, and distribution of information needed to determine (1) whether or not a project objective or set of objectives has been met and (2) the extent to which a project objective or set of objectives has been met. Information resulting from product evaluation should permit project management to gain a clear overview of project progress in terms of project objectives. For this reason, due consideration from the very outset of project development should be given to stating project objectives in measurable terms. The less measurable project objectives are, the less probable it will be that effective product evaluation can take place, and, unless effective product evaluation can take place, project management will have no rational foundation on which to base those key decisions which will affect the success or failure of the project as a whole, as well as the continuation of the project, either in part, or as a whole.

§ 6.7 Criteria for determination of the adequacy of State provisions for evaluation.

The following criteria should be used to determine the adequacy of State provisions for evaluation of the Title III program and are included here as a guide to States in

their development of an effective evaluation program.

(a) State evaluation objectives:

(1) The State evaluation strategy begins with clear statements of performance objectives, i.e., what is to be evaluated, why, and to what extent;

(2) The list of performance objectives should include at least the following commitments:

(i) To collect and report annually to the U.S. Office of Education the effectiveness of Title III projects on the persons served;

(ii) To collect and report annually to the U.S. Office of Education the effectiveness of the Title III program on the State-as-a-whole; and

(iii) To identify the kinds of evaluative information needed for State management of Title III programs and to collect, process, and distribute such information in an accurate, timely, and usable manner.

(b) Organizing for State evaluation:

(1) The evaluation strategy shows evidence of active participation by State staff, advisory council members, and representatives from local projects in the planning and development of the strategy;

(2) The strategy includes appropriate activities and provision for adequate staff to achieve each of the stated evaluation objectives;

(3) The strategy includes specific plans for training State and local project personnel in evaluation;

(4) The amount of funds budgeted and time allocated for evaluation activities are adequate to implement the State evaluation strategy;

(5) The strategy shows evidence that Title III evaluation strategy is coordinated with the State's comprehensive plan for State evaluation of education;

(6) The strategy shows evidence of utilization of appropriate non-Title III State resources such as State instructional supervisors, State planning and research units and State statistical and data processing units for the evaluation of Title III;

(7) The State strategy for evaluation defines the responsibilities of the State advisory council for evaluation including its line of communication and working relationships with the State Title III staff, local project staff, and National Advisory Council and provides adequate technical, financial, and clerical assistance to the State advisory council to carry out this function; and

(8) The State evaluation strategy has a built-in provision for the evaluation of its own operation including control points to assess the effectiveness and efficiency of State and local evaluation activities.

§ 6.8 State strategy to evaluate the effectiveness of Title III projects on persons served and on the State-as-a-whole.

(a) Evaluating the effectiveness on persons served.

The State strategy to document the effectiveness of Title III projects on persons served should include at least the following:

(1) A requirement that the local project's annual evaluation report be submitted to the State and include the following:

(i) Performance objectives stated in terms of what the learner is able to do, how he is to demonstrate what he can do, and the minimum acceptable standard of that performance whether it be in the cognitive, effective, or psychomotor domains;

(ii) Identification of the variables that might affect the project outcomes such as: (a) age, sex, socio-economic background of the learner; (b) age, amount of training, amount of experience, enthusiasm, and sex of project staff members; and (c) the learning environment of school, home, and community.

(iii) Identification of process variables such as learner and teacher performance requirements, curriculum, instructional materials and equipment, school facilities, and duration and sequence of learner and teacher activities;

(iv) Identification of the major outcomes and explanation of reasons for such outcomes; and

(v) Identification of other factors that are crucial to the successful replication of the project.

(2) A plan for annual State on-site visits to monitor and audit the project's effectiveness on persons served; and a procedure for the collection and validation of such evaluation data that will include the following:

(i) The strategy includes a comprehensive plan for data collection including a time schedule, identification of sources of information, and a copy of each instrument used, if any.

(ii) The kinds of information to be collected on on-site visits are identified including procedures for data collection and validation, and a copy of each instrument to be used.

(3) A plan for processing, analyzing, interpreting, and distributing such information that will include the following:

(i) A systematic routine for data processing and verification of data;

(ii) A comprehensive analysis plan including statistical treatments, if appropriate; and

(iii) An identification of the users of evaluation information and when and in what form the information is requested.

(b) Evaluating the effectiveness on the State-as-a-whole.

Title III makes possible a limited but concentrated attack on the State's selected critical educational problems by funding projects in order to demonstrate possible solution strategies. The effectiveness of Title III on the State-as-a-whole is largely determined by: how effectively and efficiently each project achieved its own objectives; how extensively the demonstration was institutionalized in the school district in which it was demonstrated; and how extensively the demonstration benefited other State school districts in solving similar educational problems.

(20 U.S.C. 844a(b)(6)); (45 CFR 118.8)

PART 7—VALIDATION OF EDUCATIONAL PRACTICES

§ 7.1 An overview of validation.

Each State educational agency is encouraged to bring about greater accountability in education through the validation of their Title III projects. Validation of Title III projects is a process of reviewing a practice to verify its credibility as an exemplary program through official and/or expert appraisal. The entire process of educational reform through diffusion can be accelerated through this process and the cost of change substantially reduced. Consequently, each State plan program should be effectively structured so as to increase the adoption and replication rate of projects funded under the Title III State Plan program.

§ 7.2 The validation process.

State educational agencies should develop validation procedures and criteria for selecting and training the validation team and conducting the on-site visit, and for preparing the validation report through such procedures as: (a) Developing the format for preparing the validation report; (b) developing the procedures for assessing the effectiveness and efficiency of the validation procedures; (c) developing a listing of successful activities for bringing about the adoption of validated practices; (d) developing criteria and procedures for identifying potential adopters of validated practices; and

(e) developing a listing of alternative ways of organizing and coordinating the identification, validation, and dissemination of validated practices among various units of the State educational agency.

(20 U.S.C. 844a(b)(6)); (45 CFR 118.8)

PART 3—DISSEMINATION

§ 8.1 The purpose of dissemination activities.

(a) The purpose of the dissemination process in a State Title III program is to develop an awareness of, stimulate interest in, and provide opportunities for personal evaluations of Title III innovations. Its long-term goal is to facilitate the adoption and replication of tested educational innovations in the host school system and in other school systems throughout the State and Nation. Therefore, the local educational agencies, the State educational agencies, and the U.S. Office of Education should have distinct but complementary roles in dissemination.

(b) In planning State dissemination activities, distinction should be made between the needs of educational practitioners and those of the general public. Information for the public is designed primarily to cause citizen awareness and knowledge of new educational programs, while information for educators provides technical data to make it possible for educators to assess alternative solutions to local educational problems. The latter will rely more heavily upon interactions among professionals and less upon publicity and public relations programs. Though the two information streams may have common data sources and will often intermingle, their form and final destinations must remain distinct in order for each audience to receive the kinds of information needed in forms that are understood.

(c) Section 303 of the Act specifies that the objective of State Title III dissemination activities shall be the adoption of exemplary educational practices demonstrated by the Title III projects. This means that States should assume an active policy of identification of exemplary innovative projects, or components of them, and undertake a comprehensive program of diffusing the evaluation findings from these programs to other school systems. Thus the success of the State's dissemination activities will determine the success of the Title III program as a whole.

(d) Accountability has been built into a dissemination program. Such accountability makes evaluation not only important in terms of its own role in program operation, but changes the emphasis in evaluation from the conventional research-design type studies of project outcomes to inclusion of evaluative data covering the context, process, and management of the project.

§ 8.2 The role of the State and local educational agencies, and the U.S. Office of Education.

Section 303(c) of the Act provides funds for dissemination and Section 305(b)(6) of the Act gives the primary responsibility for the evaluation of Title III programs and projects, and the dissemination of the results of such evaluations and other information pertaining to such programs or projects to the State educational agency.

(a) The role of the local educational agency.

Local educational agencies should disseminate, locally, information which facilitates the adoption and adaptation of the innovation. They should not develop newsletters, filmstrips, films, and similar materials for audiences outside their project area. These dissemination materials should be mailed to local project constituents only. This is not

meant to preclude local educational agencies from having some dissemination contacts with audiences outside the project area. Local educational agencies may address audiences larger than their own constituencies through professional journals and the established public media. They may also, upon request, loan films and other materials to agencies outside the project area and may develop descriptive materials on a project in order to answer inquiries from other agencies.

(b) The role of the State educational agency.

(1) It is desirable that State educational agencies develop procedures to assure that local project funds are not used for dissemination of information beyond the local project area which is defined as the geographic region where the persons served by the project reside. In approving project proposals for initial funding and for continuation, State educational agencies should review the local educational agencies' dissemination activities to ensure that they are consistent with State dissemination objectives and do not duplicate statewide dissemination efforts which should be included in the State plan.

(2) If, following an evaluation of a project, the State educational agency determines that an innovation is of such significance that broader adaptation or adoption of it should be encouraged, the State should use State administration funds authorized by Section 303(c) of the Act to disseminate the promising educational practices to other local educational agencies in the State.

(3) The amount of the project budget devoted to dissemination activities should bear a reasonable relationship to the size and progress of the project. For example, it may be desirable that the dissemination budget increase in amount during the second and third years as the project generates evaluation data supporting the project's effectiveness. It is the responsibility of States to establish procedures to improve the quality of dissemination activities and materials.

(4) The State educational agency should advise the U.S. Office of Education annually of those demonstration projects which it determines could have nationwide significance. The U.S. Office of Education's role will be to provide national dissemination of the identified innovations.

(c) U.S. Office of Education dissemination program.

(1) National dissemination activities.

The U.S. Office of Education in cooperation with the State educational agencies is modifying and expanding its responsibilities for national dissemination of the Title III program. Plans for national dissemination activities include the following:

(i) With the help of the States, the Office of Education will identify, validate, and encourage the adoption, as appropriate, of innovative and exemplary programs which hold promise of demonstrating ways of meeting critical national needs. This may include publications, films, conferences, and a variety of interpersonal activities;

(ii) As part of a continuing effort, the Office of Education will seek State educational agency cooperation to establish a repository of instructional and curricular materials developed by Title III projects. These include publications, films, and other print and nonprint educational materials. Annotated bibliographies of these materials will be revised annually and distributed to all State educational agencies and other appropriate agencies; and

(iii) Through the joint efforts of the U.S. Office of Education and the National Institute for Education pertinent information will

be published regarding exemplary Title III projects.

(2) Technical assistance to State and local educational agencies. In addition to these activities, the U.S. Office of Education will, whenever possible, provide technical assistance to State and local educational agencies to aid them in improving their evaluation and dissemination programs. Technical assistance may be provided through the following activities:

(i) Whenever possible, Office of Education personnel will conduct and participate in State and regional conferences held in cooperation with local and State educational agencies, universities, and other educational and cultural organizations to encourage the development and implementation of effective dissemination strategies at State and local levels; and

(ii) Wherever possible, the Office of Education will provide consultative services and conduct workshops to encourage the development of process as well as product evaluation techniques which will provide validated information on project findings for effective dissemination.

(iii) The Office of Education will also continue to assist State educational agencies in their dissemination efforts by working to improve State dissemination plans.

§ 8.3 Management implications.

The stress on accountability for the outcomes of the dissemination activities has several important implications for management of the Title III program and the dissemination efforts at the State level.

(a) Organizational position of Title III program. The location of the Title III program in the organizational structure of the State educational agency should enhance access by program personnel to central administrative personnel and to the various educational specialists throughout the State educational agency.

(b) Dissemination personnel. State educational agency personnel charged with dissemination responsibilities for Title III of the Act should have a broad knowledge of innovations in education, an understanding of the total education process, and a sensitivity to the intricacies of the change process. They should be educators as well as information specialists.

(c) Dissemination objectives. The Title III mandate to disseminate information about and cause the adoption of promising programs requires close attention to the formulation of performance objectives for dissemination activities. Publications, films, meetings, visits, or other activities should be undertaken only when the disseminator has a preconceived idea as to what the behavior of participants should be in relation to causing the adoption of some new practice. Moreover, the disseminator should have in mind an acceptable level of response as a result of such activities. For example, if 100 persons are to be given a demonstration of a successful innovation, an acceptable level of response might be 10 persons requesting further assistance to introduce some aspect of the program in their own schools. Specificity of dissemination objectives also makes evaluation of the dissemination activities easier.

(d) Relationship of State needs assessment and dissemination. The Title III dissemination activities should relate directly to the State's critical educational needs including those in special education as identified by the Title III needs assessment. These needs will help dictate the priority ranking of dissemination objectives.

(e) Dissemination strategies. When developing educational change strategies, dissemination planners need to be aware of the

several stages of the change process. As stated in § 3.1 of Chapter II of these guidelines, these stages are awareness, interest, evaluation, trial, and adoption. Most superintendents of schools do not attempt to introduce an innovation unless they have some opportunity for person-to-person or on-site evaluation of the new practice. It is, therefore, important that the State disseminator accept the responsibility not only to develop an awareness and interest in innovations, but also to provide personalized opportunities for educators to examine and evaluate innovations on-site and in operation.

(f) *Linkage of evaluation and dissemination.* A linkage between State evaluation and dissemination efforts should be given management consideration. Since the primary dissemination objective is the replication of exemplary practices, the disseminator needs to utilize information collected by evaluators and to understand the level of validity of that information. Since evaluation findings are useful to the educational community only if they contain the kinds of information practitioners need in order to make decisions about their feasibility for their own schools, planning for evaluation should be coordinated with the planning for dissemination.

§ 8.4 Nature and assignment of dissemination responsibilities.

Although the organizational structures for administering the Title III program vary among the different States, attention should be given to the following responsibilities when planning Title III dissemination activities:

(a) *Organization.* If the public information component of the State educational agency is committed primarily to handling the necessary press and speech activities of the Chief State School Officer, the Governor, or the State legislative body, consideration should be given to establishing a separate unit for program dissemination activities. Such a unit might have responsibilities for coordinating all technical information activities in the State, including that of Title III.

(b) *Information retrieval.* Rapid retrieval of information about research and practice is important to the process of innovating. Therefore, the State should take the initiative to activate a service for Title III applicants and others in the State agency and in school districts who may need information about promising new ideas. Each State should have, in a central location, the Educational Research Information Center of the U.S. Office of Education and the National Institute for Education (hereinafter referred to as ERIC) collection of microfiche and other documents, with personnel assigned to conduct searches on demand. Provision should be made to have access to other information services in the State, some of which are found in regional centers and on campuses of colleges or universities.

(c) *Dissemination of project materials.* Teaching and curricular materials and films developed through Title III projects should be identified, collected, and evaluated systematically by the State educational agency. Strategies should also be developed to promote usage of such materials by other school districts in the State. Promoting and facilitating usage may include developing limiting copyright arrangements with educational publishers, reprinting by the State educational agency, and other appropriate means such as providing a copy to a nonprofit organization (such as Xerox's University Microfilm Division in Ann Arbor, Michigan) for promotion and reproduction.

(d) *Dissemination of evaluation findings.* Coordination of evaluation and dissemination efforts should be maintained in order to provide the disseminators with validated

findings about exemplary programs for further dissemination within the State and for reporting to the U.S. Office of Education.

(e) *Technical assistance to local educational agencies.* The State has the responsibility for monitoring all local project dissemination activities to assure that project funds expended for dissemination are used mainly for dissemination in the project area and not, unless authorized by the State, for statewide or national dissemination. The State also should provide technical assistance to the local educational agencies to assist them in developing dissemination objectives and designing change strategies at the local level so as to influence local adoption of the Title III project at the end of the project period.

§ 8.5 Criteria for determining adequacy of State plan provisions for dissemination.

The following criteria should be used to determine the adequacy of State provisions for dissemination of the Title III programs and are included here as a guide to States in their development of an effective dissemination program:

(a) *The adequacy of the underlying principles:*

(1) The dissemination program facilitates desirable educational change through identifying, validating, and promoting the adoption or adaptation of promising and exemplary practices operating in Title III of the Act.

(2) The dissemination program is predicated on the availability and validity of evaluation findings concerning the projects operations and outcomes.

(3) Dissemination activities are related to written performance objectives for selected audiences according to expressed or known needs for information.

(4) Both State and local dissemination programs are based on a knowledge of the kinds of communication channels available and their area of impact (including public media, technical journals or house organs, and other communication channels or decisionmakers).

(b) *The adequacy of administrative considerations.*

(1) Personnel engaged in the State dissemination process have (i) understanding and experience with the educational process, (ii) experience and skills in communication, and (iii) knowledge of the complexities of the change process.

(2) The amount of dissemination budget reflects the high priority given this activity by the legislation.

(3) In organizing the dissemination program, the public information activities and the technical or program information activities are adequately distinct but carefully coordinated.

(c) *The adequacy of objectives and activities.*

(1) Activities are planned which will retrieve, analyze, and make accessible descriptions and evaluations of project operations and outcomes.

(2) Activities are planned which will cause an awareness and interest in projects on the part of appropriate educators in the State.

(3) Activities are planned which will provide opportunities for educators to examine and evaluate the operating qualities of the innovations in projects.

(4) Activities are planned which provide technical assistance to those who show a desire to install the innovation in their school.

(5) Activities are planned which will inform the general public about innovations being demonstrated through Title III in the State.

(6) Activities are planned which will retrieve and evaluate instructional materials produced by projects, forward significant materials to the U.S. Office of Education for ERIC and other systems, and which will disseminate them appropriately within the State.

(d) *The adequacy of evaluating dissemination efforts.*

(1) Dissemination plans include provisions for receiving feedback from communications for purposes of evaluating their impact.

(2) There is evidence that activities are planned to ensure that evaluation designs of local projects will produce information needed for dissemination locally and statewide.

(20 U.S.C. 844a(b)(6)); (45 CFR 118.8)

§ 8.6 Criteria for an effective dissemination program at the local level.

The following criteria should serve as a guide for State agency personnel as they work with local projects in developing and monitoring dissemination components in Title III projects.

(a) *Planning and managing the dissemination program.*

(1) Provision is made for substantive involvement of potential information users in the planning of the dissemination program.

(2) Provision is made for continuing internal communication among project staff about the project.

(3) Provision is made to conduct studies to determine mores, economic status, political processes, and social structure of the community.

(4) There is a commitment to dissemination, as evidenced by identifiable items in the project budget.

(5) Provision is made for coordination and cooperation with other information services in the school system and the community, including appropriate public media.

(6) Consideration is given to the means of handling audience responses to communications being planned.

(7) Consideration is given to the possible conflict between the project objectives and the values and objectives of the school and community.

(b) *Dissemination objectives.*

(1) The dissemination objectives relate well to project objectives.

(2) The dissemination objectives should be written and available.

(3) The dissemination objectives specify desired audience reactions to the dissemination activities.

(4) The dissemination objectives include performance criteria and time constraints and are feasible in terms of available funds.

(5) The dissemination objectives reflect knowledge of the adoption stages (awareness, interest, evaluation, trial, and adoption) and of the characteristics of the potential adopters (innovators, early adopters, early majority adopters, late majority adopters, and laggards).

(c) *Dissemination personnel.*

(1) The project dissemination staff should be knowledgeable about the change process and understand the administrative and instructional processes of education.

(2) This staff should possess writing and oral communication skills and be skilled in interpersonal relations.

(d) *The dissemination strategies and approach.*

(1) The approach should be that of tact, "soft sell," and objectivity.

(2) The approach should be flexible, reflecting various strategies, viz, research-centered, and cost-benefit.

(3) The approach should consider all those who are involved in the education decision-making process.

(4) The approach should be that of problem-solving and removing blocks to change.

(5) The techniques should be appropriate to the times and conditions, as shown by variability and creativity in the use of committees, conferences, demonstrations, administrative edicts, media and the like.

(e) *The use of communications for dissemination purposes.*

(1) Communications are based on verified needs for information by clients.

(2) The selected medium or media are appropriate for the message and for the intended audiences.

(3) The messages are adapted to the various stages in the change or adoption process.

(4) Wherever possible, the messages are designed to solicit feedback.

(5) The messages are of good technical quality.

(6) The messages relate to decision-making time lines of the project and the school system.

(7) The messages have been pre-tested with appropriate audiences to determine their relevance, clarity, validity, timeliness, and practicality.

(8) The messages are in a considered order according to priorities as to who should receive them first, second, etc.

(f) *Evaluation in the dissemination process.*

(1) Provision is made to determine and record relative effectiveness of various strategies and communications in order to alter strategies as the situation changes.

(2) Dissemination designed to encourage the adoption of innovation is based upon objective evaluation data.

(20 U.S.C. 844a(b)(6)); (45 CFR 118.8(c))

PART 9—ADOPTION

§ 9.1 The importance of adoption.

A major objective for Title III of the Act is accomplished when it can be shown that a significant number of adaptations and replications of programs demonstrated by Title III have taken place in the State. In addition, it is hoped that a high proportion of the programs will be continued in substantially the same form by the applicant local educational agency after the period of Federal funding ends. The State therefore, should plan activities to facilitate the adoption of validated projects.

§ 9.2 Criteria for an effective adoption program.

The following criteria should serve as a guide for State educational agency personnel as they work with local projects in developing and monitoring adoption components in Title III projects.

(a) Activities are planned which orient project personnel to their demonstration function and to their role as catalysts for change in their community and State.

(b) The data collection plan includes practitioner-oriented information, such as cost effectiveness data and context and process information.

(c) Activities are planned which use project personnel to teach and train potential adopters.

(d) Activities are planned which identify the potential adopters of projects being demonstrated.

(e) Activities are planned which identify and describe the formal and informal communications network which passes on information concerning innovations in the State.

(f) The dissemination activities of projects are reviewed to assure credibility so as to not promise more than the project can deliver.

(20 U.S.C. 844a(b)(6)); (45 CFR 118.8(d))

PART 10—GUIDANCE, COUNSELING AND TESTING PROGRAMS

§ 10.1 Purposes.

(a) The purposes of guidance, counseling, and testing programs under the Act are to:

(1) Advise students in public and private elementary and secondary schools or public junior colleges and technical institutes regarding courses of study best suited to their ability, aptitudes, and skills;

(2) Advise students as to the type of educational program they should pursue, the vocation they should train for and enter, and the job opportunities in the various fields;

(3) Encourage students with outstanding aptitudes and abilities to complete their secondary school education, take the necessary courses for admission to institutions of higher education and enter such institutions.

(b) All programs or projects under Title III of the Act should, in some justifiable way, be related to one of the purposes as stated above. These purposes are primarily educational-vocational in nature. However, personal-social areas of development are also important to success in educational-vocational planning and achievement. The definition of "guidance and counseling" in § 118.8 of the regulations includes assistance in personal-social development, including the development of a positive self-concept. This is particularly necessary in relation to elementary school guidance programs. Projects in the areas of school health, psychological and social work services might be combined with guidance and counseling programs or projects to provide comprehensive programs of guidance, counseling, and other pupil personnel services.

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

(20 U.S.C. 843); (45 CFR 118.2, 118.8, 118.11, 118.14)

§ 10.2 Division of staff.

It is suggested that staff responsibilities and functions be divided into administrative and supervision and leadership activities:

(a) *Administration activities.*

Activities pertaining to "administration" would include, but would not necessarily be limited to, State plan review, project review, Title III fiscal activities, project approval, the mechanics of project management and policy development. Conversely, activities which would likely not pertain to "administration" would include, but would not necessarily be limited to, supervisory activities, supervisory staff development, leadership activities, and project development.

(b) *Supervision and leadership activities.*

Programs of State supervision and leadership may include the following activities:

(1) Organization, general direction, and coordination of the guidance, counseling, and testing programs established under the plan;

(2) Planning State programs and assisting in the planning of local programs;

(3) Assisting local guidance personnel in establishing, maintaining, or improving programs;

(4) Planning and preparing materials and information for State and local programs;

(5) Planning innovative or exemplary guidance, counseling, and testing programs;

(6) Demonstrating through pilot programs, or otherwise, guidance, counseling, and testing procedures and techniques;

(7) Evaluating the results of guidance, counseling, and testing programs; and

(8) Such other related activities as may be necessary for the organization, maintenance, and improvement of programs or projects established under the plan.

(20 U.S.C. 843(b)(4), 844a(b)(1)(B)(ii), (b)(7) and (8), Section 131(b) of P.L. 91-230);

(45 CFR 118.10, 118.11, 118.14)

(45 CFR 118.10, 118.11, 118.14)

(45 CFR 118.10, 118.11, 118.14)

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(45 CFR 118.10, 118.11, 118.14)

§ 10.3 Program content.

Guidance, counseling, and testing programs may include the following activities to the extent that they are carried out by utilizing procedures and techniques appropriate to the educational levels of the students:

(a) Collecting, organizing, and interpreting such information as may be appropriate to the understanding of the student's abilities, aptitudes, interests, and other personal assets and liabilities related to educational readiness and progress and to career planning and development;

(b) Making available to the student and his parents such educational and career information as may be essential for them to understand the educational process and the various educational and career opportunities and requirements related to the choice of an educational program and a career;

(c) Providing individual counseling (1) to help the student and his parents develop a better understanding of the student's educational and occupational strengths and weaknesses; (2) to help the student and his parents relate his abilities and aptitudes to educational and career opportunities and requirements; (3) to help the student, with the assistance of his parents, make appropriate educational plans, including the choice of courses and the choice of an institution of higher education; (4) to stimulate desires in the student to utilize his abilities in attaining appropriate educational and career goals; and (5) to provide the student, directly or through arrangements with other appropriate resources, with such assistance as may be needed for the development of his aptitudes and the full utilization of his abilities;

(d) Providing services to encourage and assist students in making educational transitions, such as placement in the next educational level, and in securing appropriate employment during and upon completion of the educational program;

(e) Providing such group activities as may be necessary to orient students and their parents to the (1) school program including its offerings, services, and requirements; (2) educational opportunities and requirements at the next level; and (3) career opportunities and requirements;

(f) Providing to teachers and school administrators such assistance and information about individual students or groups of students as may be necessary to enable them to plan and implement curricular and instructional programs and services which will afford students maximum and equal opportunity for educational development and which will be consistent with the manpower needs of the State and the Nation; and

(g) Collecting and analyzing such information as may be needed to evaluate the guidance and counseling program and to provide such guidance information as may be available and needed to evaluate the school's program in terms of the educational needs of the students and of the State and the Nation.

(20 U.S.C. 843(b)(4), 844a(b)(1)(B)(ii), (b)(7) and (8), Section 131(b) of P.L. 91-230);

(45 CFR 118.10, 118.11, 118.14)

(45 CFR 118.10, 118.11, 118.14)

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(45 CFR 118.10, 118.11, 118.14)

equipment, and materials to be available for the conduct of guidance and counseling activities under the plan; (e) supervisory methods and procedures to be employed in local guidance and counseling projects; and (f) coordination methods and procedures to provide assurance of appropriate relationships between the local guidance and counseling program under the plan and other related services available to students.

§ 10.5 State Advisory committee.

A State may choose to establish a guidance, counseling, and testing advisory committee either on an ad hoc or continuing basis to deal more fully and explicitly with advisory matters relating to guidance, counseling, and testing program development. A liaison relationship, however, should be maintained with the State's Title III advisory council to coordinate and relate the State's overall program development strategy to the total resources under Title III of the Act.

(20 U.S.C. 843(b)(4), 844a(b)(1)(B)(ii)); (45 CFR 118.10, 118.11, 118.24)

PART II—OTHER PROGRAM CONSIDERATIONS

§ 11.1 Handicapped children.

(a) Funding decisions.

Determination of the percentage of program dollars used for the handicapped under each Title III project should be the joint responsibility of the State department of education's unit on education of the handicapped and the State department of education's unit on Title III. Whatever the level, it should be mutually determined and evidence to this effect should be presented in the State plan.

(b) Types of projects which can be designed.

Projects providing services for the handicapped under the Title III State plan programs may or may not be a part of the larger Title III project and in either situation may serve one or more types of handicapped children, as explained in the following:

(1) Title III projects should not emphasize "meeting the needs of handicapped children" but rather demonstrate the solution to critical educational problems of the handicapped in the State. Once an acceptable and proven practice has been demonstrated, efforts should be made to encourage its adoption throughout the State and its operation with funding from sources other than Title III.

(2) The total Federal effort in behalf of the handicapped is to provide through mutuality of planning at the local, State, and Federal levels a continuum of services for this segment of our population. Title III programs for the handicapped should be seen as a means to ensure this continuum, but they must be seen as a demonstrative and catalytic part and not as a basic support effort. The mutuality of planning between the Title III coordinators and the State special education personnel should also lead to the development of large, easily identifiable projects and programs which are designed to demonstrate ways to solve one or more critical problems in the field of education of handicapped children. It is more desirable to have one or two well-conceived projects seeking to demonstrate solutions in critical problem areas within a State as defined by the Title III coordinators, the State's needs assessment, or the State Title III advisory council, and/or the State special education units, than to have many projects or programs which will not be exemplary or innovative. With this type of provision of services the concern for percentages of funds set aside for the handicapped will be lessened and the dedication to solving mutually identifiable problems through model education ap-

proaches for the handicapped will be increased.

(c) *Bureau of Education for the Handicapped; Assistance to State and local educational agencies.* Staff from the Bureau of Education for the Handicapped of the U.S. Office of Education, when requested, will assist local and State educational agencies in cooperation with the Bureau of School Systems of the U.S. Office of Education in developing projects and State plans by making available staff, when possible, or by locating in the State or region competent personnel for such assistance. In the event staff are not available, States may arrange to send their personnel to Washington for consultation.

(20 U.S.C. 844a(b)(8)); (45 CFR 118.26)

§ 11.2 Local project administration.

(a) *Continuation and discontinuation of projects.* To accomplish the objectives of Title III of the Act, provisions should be made to continue the support of promising projects as well as to terminate those projects which prove to be ineffective or unsuccessful as set forth in § 118.27 of the regulations. Only those projects which have been evaluated and can provide objective data which demonstrate that they are successfully meeting their objectives should be continued. These projects should continue to serve as models so that other school districts can adopt or adapt those practices which have been validated as being successful.

(b) *Extension of project or budget period.* When progress under the grant is delayed and circumstances make it necessary to request an extension of either the project period or the budget period, or both, without additional funds, the local educational agency should make a written request to the State educational agency. (Where it appears that the activity to be accomplished within the project period or the budget period, or both, will be completed within three (3) months after the expiration date, it will not be necessary to request an extension. However, if it appears that the time required will exceed three (3) months, the Title III coordinator should be informed and an extension requested).

(20 U.S.C. 844); (45 CFR 118.27)

§ 11.3 Participation of children from private nonprofit schools.

(a) *Providing information.* State educational agencies should assure that private school children receive the Title III benefits to which they are entitled under the legislation, by taking action to:

(1) Provide information to local educational agencies through workshops and other means concerning the organizational structure of private schools in the State and providing the names of appropriate persons to contact in the private school structure; and

(2) Provide information to representatives of private school children in the State concerning eligibility of and provisions for voluntary participation by private school children in Title III programs and projects.

(b) *Extent of involvement.* Whenever private school children are eligible, the local educational agency should ask the representatives of the eligible private school children whether they desire to participate in the planning of the project. Where it is appropriate, representatives of private school children should be involved in the local needs assessment and in the planning of projects at the very beginning, so that the needs of private school children are considered in conjunction with the needs of public school children to the development of a proposal. In addition, it is suggested that these representatives be asked to participate in the evaluation process.

(c) *Monitoring projects.* The State educational agencies should monitor each approved Title III project which involves private school children and assure that it benefits eligible private school children in the project area who desire to participate on an equitable basis with public school children benefited by the project. If a local educational agency is serving more than one need through separate components of a coordinated project proposal, each component should be open to all eligible children in both the public and nonpublic schools.

(d) *Approval of projects.* Project proposals that benefit only public school children should not be approved if there are private school children attending school in the area to be served unless the representatives of eligible private school children in the project area have formally indicated that the eligible private school children do not wish to participate or do not have the needs served by the proposed project.

(e) *Types of services.* During the operational phase of the project, many different types of arrangements for providing services might be made. For example, dual enrollment programs, mobile units, visiting personnel, after-school activities, central libraries, or museums could provide educational opportunities to children and teachers in private nonprofit schools.

(f) *Facilities.* In many communities, public facilities will not be equipped to receive a large influx of private school students, nor will sufficient resources be available to construct or lease a facility. Services may be provided on private school premises when it is not feasible or practical to provide such services on public premises.

(g) *Salaries.* Section 118.15(c)(1) of Title 45 CFR prohibits the payment of salaries to private school teachers; however, stipends are of a different nature and may be paid to private school personnel attending Title III inservice training programs. Further, that section of the regulations should be interpreted to prohibit the payment of the salary of a teacher who is teaching in the regular school program of a private school as a substitute for a private school teacher receiving inservice training supported under Title III of the Act. Private school teachers may receive payments with Title III funds for travel allowances, luncheon expenses, and similar costs when attending approved Title III inservice training programs. However, State educational agencies should not pay a fee to a private school teacher where such fee is not a normal training stipend but is for the specific purpose of paying for a substitute for the regular classroom duties of a trainee teacher.

(h) *Equipment.* Equipment purchased with Title III funds may not be permanently assigned to or placed on private school premises; however, project personnel performing services on private school premises may bring on the private school premises those necessary "tools of their trade" which are capable of being removed from the premises each day. Such equipment may be left on private nonprofit school premises for short periods of time as necessary to conduct particular Title III activities.

(20 U.S.C. 844(b)(2)(B), 845(f)(1), 855); (45 CFR 118.15)

§ 11.4 Suggested project numbering system.

It is suggested that the following system be used for numbering Title III projects to bring about uniformity among the States:

State No.	Year project submitted	Project No.	Initial grant (0) continuations (1, 2)
25.....	1974	0212	2

The numbers assigned to each of the States are as follows:

10 Alabama	40 New Jersey
11 Alaska	41 New Mexico
12 Arizona	42 New York
13 Arkansas	43 North Carolina
14 California	44 North Dakota
15 Colorado	45 Ohio
16 Connecticut	46 Oklahoma
17 Delaware	47 Oregon
18 District of Columbia	48 Pennsylvania
19 Florida	49 Rhode Island
20 Georgia	50 South Carolina
21 Hawaii	51 South Dakota
22 Idaho	52 Tennessee
23 Illinois	53 Texas
24 Indiana	54 Utah
25 Iowa	55 Vermont
26 Kansas	56 Virginia
27 Kentucky	57 Washington
28 Louisiana	58 West Virginia
29 Maine	59 Wisconsin
30 Maryland	60 Wyoming
31 Massachusetts	61 American Samoa
32 Michigan	62 Canal Zone
33 Minnesota	63 Guam
34 Mississippi	64 Puerto Rico
35 Missouri	65 Virgin Islands
36 Montana	66 Bureau of Indian Affairs
37 Nebraska	67 Trust Territory of the Pacific Islands
38 Nevada	
39 New Hampshire	

(20 U.S.C. 844a(b)(11)); (45 CFR 118.16)

CHAPTER III—LOCAL PROGRAM DEVELOPMENT AND OPERATION

PART 1—PROJECT PROPOSAL SUBMISSION PROCESS

§ 1.1 Dates of submission.

(a) The State may wish to establish several submission dates during the year for the submission of project applications by local educational agencies or to limit dates to one or two per year. Before establishing submission dates, the State agency should give consideration to the funding and fiscal policies of the State, the school year calendar, the State's fiscal year, and the anticipated funding level.

(b) States may wish to consider using January or February as periods for submission of project applications from local educational agencies for the following reasons: information regarding appropriations is more likely to be available; considering time necessary for review, approval, and negotiation, the budget periods would then more nearly parallel budget development and staff recruitment in the local school district; funding near the end of a fiscal year would allow program administrators at the State level more latitude in funding from the prior fiscal year or the new fiscal year; and mid-year project termination, with its concomitant staff release problems would be alleviated.

§ 1.2 Letter of intent.

A State may wish to use the "letter of intent" system which permits the local educational agency to submit a letter indicating its intent to submit a formal proposal. The letter should include an abstract of the intended proposal.

(20 U.S.C. 844); (45 CFR 118.23(b))

PART 2—FUNDING PROCESS

§ 2.1 Project period.

(a) Under § 118.27(a) of the regulations the State educational agency is required to formulate a general policy concerning the total period of time for which a project may be supported with funds under Title III (project period). In order to conserve funds

for new projects, the State would want the project period generally not to exceed three (3) years. The State's policy on project periods should emphasize the necessity for phasing out Federal support of local projects and for gradual incorporation of project activities into the regular school program.

(b) It is recommended that the project period exceed three years only in two situations:

(1) For those projects which have been evaluated and validated by the State educational agency as successfully meeting their objectives and actually demonstrating a solution to one of the critical educational needs of the State, and upon recommendation of the State advisory council, a grant for an additional period of time for purposes of serving as a demonstration site for potential adopters may be approved as part of the State educational agency dissemination program; and

(2) In cases where it is determined that a time extension is required to assure adequate completion of the project, and when an extension is requested in writing at least sixty (60) days prior to the end of the project period, the project may be extended for a period not to exceed ninety (90) days utilizing unexpended project funds.

§ 2.2 Grant terms and conditions.

Each grant document used by a State educational agency should have specific terms and conditions which are attached to the grant document to assist the State in the development of the grant document.

(20 U.S.C. 844); (45 CFR 118.27)

PART 3—PROJECT DESIGN AND ACTIVITIES

§ 3.1 Project design.

(a) *The proposal.* The project proposal should define the entire scope of work that the applicant wishes to accomplish during the project period. A project may consist of one or a combination of the following major activities: planning programs, conducting one or more pilot programs, or conducting operational activities. If groups of students within a school district have demonstrably different but similarly pressing needs, the local educational agency may, through an innovative or exemplary demonstration project, serve more than one need as separate components of a coordinated project proposal.

(b) *Project functions.* Project functions may be categorized in general terms—planning programs, conducting pilot programs, conducting operational programs—and described as follows:

(1) *Planning programs.* In formulating a solution to a problem or in designing a new program, adequate planning is a vitally important function and a proper objective under Title III of the Act. Planning normally involves utilization of persons with expertise in the areas involved, including representatives from public and private nonprofit elementary and secondary schools and the best material resources available to assist in the design of pilot and operational activities. For example, since the primary educational resource is the local educational agency, representative teachers and other school personnel whose professional activities would be affected by a particular project should be directly involved in all stages of its development.

(2) *Pilot programs.* Conducting pilot programs to test the feasibility of innovative designs on a small scale can be a valuable part of development, provided that objectives and procedures are clearly stated and that results of the effort will give definite direction to a later demonstration of the innovation if it proves to have promise.

(3) *Operational programs.* An operational program is a full-scale demonstration of an educational innovation which should include measurable objectives, a comprehensive evaluation system, an effective management system, staff development activities, provisions for community involvement, and an adequate dissemination program. It should emphasize effective use of technology combined with new and better utilization of manpower rather than the acquisition of hardware or the extensive construction of new facilities. For example, feasible alternatives to building new facilities might be the more effective use of existing facilities, the remodeling of existing structures, or the leasing of facilities.

(20 U.S.C. 844a(b)(7)); (45 CFR 118.23, 118.25.)

§ 3.2. Project activities.

(a) *Professional staff development.*

(1) Professional staff development programs or inservice education activities involving Title III staff members and other appropriate school personnel are important in meeting project objectives. Staff development programs should be directly related to enhancing those staff competencies and attitudes which will contribute to the attainment of project goals.

(2) Title III project funds can be used for the employment of consultants, payment of stipends to participants, employment of substitute teachers, essential travel, and other direct costs necessary for the effective conduct of staff development programs.

(3) The following are examples of criteria that could be used to determine the adequacy of professional staff development activities in a local project: (i) Extent to which the activities are part of an organized, continuing process with definitive objectives; (ii) extent to which the activities are based on the assessed needs of the local educational agency; (iii) extent to which plans for staff development activities involve training of personnel at each level in the local educational agency, i.e., decision-makers, project staff, and teachers cooperating in projects; and (iv) extent to which staff development activities include provisions for determining effectiveness of those activities.

(20 U.S.C. 843(b)(4), 844a(a)(1) and (b)(1)(B)(i) and (ii)); (45 CFR 118.22(c))

(b) *Educational accountability.*

In an effort to assure the quality of the Title III projects, an accountability system should be instituted at the local agency level which will include the following twelve (12) factors:

(1) *Community involvement:* The utilization of members of concerned community groups in appropriate phases of project activity to facilitate: project access to community resources; community understanding of project objectives, procedures, and accomplishments; and the discharge of project responsibilities to relevant community client, service, and support groups;

(2) *Developmental assistance:* The means for providing adequate resources in project planning, implementation, operation, and evaluation by drawing upon community, business, industrial, labor, educational, scientific, artistic, social/welfare, and governmental agencies for expertise and services necessary to effective operations;

(3) *Needs assessment:* The identification of the educational needs of children in the cognitive, effective, and psychomotor domains of learning;

(4) *Change strategies:* The development of effective strategies for systematic change in

the educational enterprise and the incorporation of the strategies in project operations;

(5) *Management systems*: The adaptation of the systems approach, through such techniques as Management by Objectives (MBO), Program Planning and Budget System (PPBS), Program Evaluation and Review Techniques (PERT), and Critical Path Method (CPM), to educational project management at the local, State, and Federal levels;

(6) *Performance objectives*: The specification of project objectives in a comprehensive, precise manner which indicates measures and means for assessing the degree of attainment of predetermined standards;

(7) *Performance budgeting*: The allocation of fiscal resources in accordance with project objectives to be realized, rather than by objects or functions to be supported;

(8) *Performance contracting*: The arrangement for technical assistance in project operations through contracts which condition compensation upon the accomplishment of specified performance objectives;

(9) *Staff development*: The determination of the nature and extent of staff development needed for the successful implementation of the accountability concept at the local, State, and Federal levels, and the design and conduct of indicated development activities;

(10) *Comprehensive evaluation*: The establishment of systems of performance control based on the continuous assessment of project operational and management processes and resultant products;

(11) *Cost effectiveness*: The analysis of unit results obtained in relation to unit resources consumed under alternative approaches to project operation, as a determinant in continued project planning; and

(12) *Program auditing*: A performance control system based upon external reviews conducted by qualified outside technical assistance, designed to verify the results of the evaluation of an educational project and to assess the appropriateness of evaluation procedures for determining the effectiveness of project operation and management.

(20 U.S.C. 844a(b) (1), (2) (6))

[FR Doc. 74-30282 Filed 12-27-74; 8:45 am]

Public Health Service

[42 CFR Part 52c]

MINORITY BIOMEDICAL SUPPORT PROGRAM

Notice of Proposed Rule Making

Notice is hereby given that the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to adopt the regulations set forth in tentative form below. The proposed regulations amend Title 42 of the Code of Federal Regulations by adding a new part 52c prescribing rules applicable to grants under the Minority Biomedical Support Program for the general support of biomedical research, authorized by section 301(c) of the Public Health Service Act, as amended (42 U.S.C. 241(c)).

Written comments concerning the proposed regulations are invited from interested persons. Inquiries may be addressed, and data, views, and arguments relating to the regulations may be presented in writing, in triplicate, to the Office of the Director, Division of Research Resources, Building 31, Room 5B-03,

9000 Rockville Pike, Bethesda, Maryland 20014. All comments received will be available for public inspection at said Office on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. All relevant material received not later than January 29, 1975 will be considered.

Notice is also given that it is proposed to make any amendments that are adopted effective on December 30, 1974.

Dated: November 19, 1974.

CHARLES C. EDWARDS,
Assistant Secretary for Health.

Approved: December 20, 1974.

CASPAR W. WEINBERGER,
Secretary.

It is therefore proposed to amend Title 42 of the Code of Federal Regulations by adding the following new Part 52c:

PART 52c—MINORITY BIOMEDICAL SUPPORT PROGRAM

Sec.	
52c.1	Applicability.
52c.2	Definitions.
52c.3	Eligibility.
52c.4	Application.
52c.5	Grant awards.
52c.6	Payment.
52c.7	Expenditure of grant funds.
52c.8	Nondiscrimination.
52c.9	Human subjects; animal welfare.
52c.10	Applicability of 45 CFR Part 74.
52c.11	Progress and fiscal records and reports.
52c.12	Grantee accountability.
52c.13	Publications and copyright.
52c.14	Additional conditions.

AUTHORITY: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 301(c), 74 Stat. 1053 (42 U.S.C. 241(c)).

§ 52c.1 Applicability.

The regulations in this part apply to grants (under the Minority Biomedical Support Program) awarded pursuant to section 301(c) of the Public Health Service Act (42 U.S.C. 241(c)) to increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research and to broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators, by providing general support for biomedical research programs at eligible institutions.

§ 52c.2 Definitions.

(a) "Act" means the Public Health Service Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "Nonprofit" as applied to any institution means an institution which is a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

(d) "Ethnic minorities" includes but is not limited to such groups as blacks, Spanish-speaking Americans, and American Indians.

(e) "Program director" means a single individual, designated in the grant ap-

plication, who is scientifically trained and has research experience and who is responsible for the overall execution of the program supported under this part at the grantee institution.

§ 52c.3 Eligibility.

To be eligible for a grant under this Program, an applicant must be:

(a) One of the following:

(1) A public or private nonprofit university, four year college, or other institution offering undergraduate, graduate, or health professional degrees, with a student enrollment derived primarily from ethnic minorities;

(2) A public or private nonprofit two year college, with a student enrollment derived primarily from ethnic minorities;

(3) A public or private nonprofit university, four year college, or other institution offering undergraduate, graduate, or health professional degrees, with a student enrollment a significant proportion (but not necessarily a majority) of which is derived from ethnic minorities, provided the Secretary determines that said institution has a demonstrated commitment to the special encouragement of and assistance to ethnic minority faculty, students, and investigators; or

(4) A Native American Indian Tribal Council; and

(b) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 52c.4 Application.

(a) Each institution desiring a grant under this part shall submit an application in such form and manner and on or before such dates as the Secretary may from time to time require. Such application shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by the terms and conditions of any award, including the regulations of this part.

(b) In accordance with section 1-00-30 of the Department of Health, Education, and Welfare Grants Administration Manual,¹ each private institution, which does not already have on file with the National Institutes of Health evidence of nonprofit status, must submit with its application acceptable proof of such status.

(c) Each application shall contain a narrative description of the institution's present biomedical research program; the nature and purpose of the proposed

¹ Applications and instructions are available from the Minority Biomedical Support Program, General Research Support Branch, Division of Research Resources, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

² The Department of Health, Education, and Welfare Grants Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR § 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

biomedical research program; the manner in which the institution intends to conduct said program in conformity with this part; and the value of the program to the overall mission and objectives of the institution. The application shall also set forth the proposed support period (not to exceed five years), a detailed budget, a justification for the amount of grant funds requested, the names and qualifications of the program director and the directors of individual projects within the program, the total facilities and resources that will be available (including where necessary collaborative arrangements with other institutions), and such other pertinent information as the Secretary may require.

§ 52c.5 Grant awards.

(a) Within the limits of funds available, and upon such recommendation as may be required by law, the Secretary shall award grants to those applications with proposed biomedical research programs which will, in his judgment, best promote the purposes of this part, taking into consideration among other pertinent factors:

- (1) the benefits that can be expected to accrue to the national effort in biomedical research;
- (2) the institution's capability, from a scientific and technical standpoint, to engage in biomedical research;
- (3) the benefits that can be expected to accrue to the institution and its students;
- (4) the administrative and managerial capability and competence of the applicant;
- (5) the availability of the facilities and resources (including where necessary collaborative arrangements with other institutions) to engage in biomedical research;
- (6) the applicant's relative need for funding; and
- (7) the overall significance of the proposal in terms of numbers of ethnic minority persons benefited thereby.

(b) The amount of any grant award shall be determined by the Secretary on the basis of his estimate of the sum necessary for the cost of the applicant's approved plan.

(c) All grant awards shall be in writing and shall specify the support period, the total recommended amount of funds for the entire support period, the approved budget for the initial budget period, and the amount awarded for the initial budget period.

(d) Neither the approval of any application nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion thereof. For continuation support, grantees must submit separate applications annually, at such times and in such form and manner as the Secretary may direct.

§ 52c.6 Payment.

The Secretary from time to time may make payments to a grantee of all or a

portion of any grant award, either in advance or by way of reimbursement for expenses incurred or to be incurred in accordance with its approved application.

§ 52c.7 Expenditure of grant funds.

(a) Any funds granted pursuant to this part shall be expended solely for the purposes for which the funds were granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, and the applicable cost principles prescribed by subpart Q of 45 CFR Part 74, provided that only direct costs of biomedical research may be charged to a grant under this part.

(b) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward and be available for obligation during the succeeding budget period. The amount of any subsequent award will take into consideration unobligated grant funds remaining in the grant account. At the end of the final budget period any unobligated grant funds remaining in the grant account must be refunded to the Federal Government.

§ 52c.8 Nondiscrimination.

(a) Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which is applicable to grants made under this part, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(b) Attention is also called to the requirements of Title IX of the Education Amendments of 1972 and in particular to section 901 of such Act which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(c) Grant funds used for alterations and renovations shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, 30 FR 12319 (Sept. 24, 1965), as amended, and with the applicable rules, regulations, and procedures prescribed pursuant thereto.

§ 52c.9 Human subjects; animal welfare.

No award may be made under this part unless the applicant has complied with:

(a) 45 CFR Part 46 and any other applicable requirements pertaining to the protection of human subjects.

(b) Chapter 1-43 of the Department of Health, Education, and Welfare Grants Administration Manual and any other applicable requirements concerning animal welfare.

§ 52c.10 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this part to State and local governments as those terms are defined in Subpart A of Part 74. The relevant provisions of the following subparts of Part 74 shall also apply to grants to all other grantee organizations under this part:

45 CFR PART 74

- Subpart
- A General.
- B Cash Depositories.
- C Bonding and Insurance.
- D Retention and Custodial Requirements for Records.
- F Grant-Related Income.
- G Matching and Cost Sharing.
- K Grant Payment Requirements.
- M Grant Closeout, Suspension, and Termination.
- O Property.
- Q Cost Principles.

§ 52c.11 Progress and fiscal records and reports.

Each grant award shall require that the grantee maintain such progress and fiscal records and file with the Secretary such progress and fiscal reports relating to the conduct and results of the approved grant and the use of grant funds as the Secretary may find necessary to carry out the purposes of this part.

§ 52c.12 Grantee accountability.

(a) All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each grant, the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available to the Secretary satisfactory evidence of expenditures for costs meeting the requirements of this part.

(b) *Accounting for royalties.* Royalties received by grantees from copyrights on publications or other works developed under the grant, or from patents or inventions conceived or first actually reduced to practice in the course of or under such grant, shall be accounted for as follows:

(1) *State and local governments.* Where the grantee is a State or local government as those terms are defined in subpart A of 45 CFR Part 74, royalties shall be accounted for as provided in 45 CFR Part 74.

(2) *Grantees other than State and local governments.* Where the grantee is not a State or local government as those terms are defined in subpart A of 45 CFR Part 74, royalties shall be accounted for as follows:

(A) Patent royalties, whether received during or after the grant period, shall be governed by agreements between the Assistant Secretary for Health, Department of Health, Education, and Welfare, and the grantee, pursuant to the Department's patent regulations (45 CFR Parts 6 and 8).

(B) Copyright royalties, whether received during or after the grant period, shall first be used to reduce the Federal share of the grant to cover the costs of publishing or producing the materials, and any royalties in excess of the costs of publishing or producing the materials shall be distributed in accordance with Chapter 1-420 of the Department of Health, Education, and Welfare Grants Administration Manual.

§ 52c.13 Publications and copyright.

(a) *State and local governments.* Where the grantee is a State or local government as those terms are defined in subpart A of 45 CFR Part 74, the Department of Health, Education, and Welfare copyright requirement set forth in 45 CFR 74.140 shall apply with respect to any book or other copyrightable materials developed or resulting from an activity supported by a grant under this part.

(b) *Grantees other than State and local governments.* Where the grantee is not a State or local government as those terms are defined in subpart A of 45 CFR Part 74, except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from an activity supported by a grant under this part, subject to a royalty-free, non-exclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials, and to authorize others to do so.

§ 52c.14 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

[FR Doc. 74-30283 Filed 12-27-74; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 25]

[Docket No. 14230; Notice 74-38]

COMPARTMENT INTERIOR MATERIALS TOXIC GAS EMISSION

Proposed Standards

The FAA is considering rule making to establish standards governing the toxic gas emission characteristics of compartment interior materials used in transport category airplanes when subjected to fire conditions. In view of evidence developed during recent accident investigations to the effect that toxic gases emitted from cabin materials during post crash fires may have significant effects on occupant survival, the FAA believes the establishment of such standards is appropriate.

This advance notice of proposed rule making is being issued in accordance with the FAA's policy for the early institution

of public proceedings in actions related to rule making. An "advance" notice is issued to invite early public participation in the identification and selection of a course or alternate courses of action with respect to a particular rule making problem.

Interested persons are invited to participate in the rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue S.W., Washington, D.C. 20591. Communications should be received on or before March 31, 1975, to assure proper consideration. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. The FAA intends to expedite consideration of all comments received in response to this Notice, and, if it is determined that further research and study is not required to develop the technical aspects of such standards, the FAA will expedite the issuance of a NPRM. However, it should be noted that a final rule establishing such standards is not anticipated for some time.

The FAA has conducted preliminary research on the characteristics of toxic gas emissions from cabin materials, and on the expected effects of such gases on humans. Although this research indicates that the state-of-the-art may have progressed to the point where material toxicity standards can be established, the information presently available to the FAA does not provide an adequate data base and considerably more data are necessary to develop the technical aspects of such standards. For instance, there is a lack of information on time history characteristics of toxic gas emissions from cabin interior materials.

The overall objective of protecting occupants from the effects of crash fires is addressed in the FAA's existing program of updating airworthiness standards. The development and implementation of toxicity standards must be considered within the framework of the total program. Such standards must be feasible for airplane design and at the same time yield improvements in safety commensurate with necessary implementation efforts.

The FAA recognizes that there are presently no materials toxicity standards, test equipment, or test methods in common use in the aviation industry. However, recent FAA research into materials smoke emission characteristics using the National Bureau of Standards (NBS) flaming and nonflaming smoke generation tests has demonstrated that the NBS test apparatus adequately serves as a repeatable means of subjecting material specimens to a controlled fire environment for test purposes. The NBS, at the request of the FAA, has conducted toxicity analyses of materials specimens with the NBS test apparatus

by use of commercially available colorimeter tubes.

The FAA desires to review the technical and cost situations before determining the form of a toxicity standard, and believes it important in this regard to have available all relevant information that can be provided by the public. To this end, the FAA welcomes the participation of aircraft manufacturers and operators, materials producers, testing laboratories, medical authorities, government agencies, and other interested persons and, by means of this advance notice, solicits the views of all interested persons on the following questions:

1. What general form should a toxicity standard have in order to most effectively complement existing regulations that deal with crashworthiness? Should the standard, for example, pertain to the chemical makeup of the materials, should it be based on the testing of materials in the presence of fire, or is some other standard appropriate? Data substantiating the reasoning behind any suggested approach should be submitted to aid in evaluation.

2. What specific toxic gases or sources of toxic gases should be taken into consideration in the standard? What limits should be specified?

3. Are there readily available test methods that can be used to accurately and consistently measure the toxic gas emission characteristics of materials in the presence of fire? Are such methods compatible with aircraft manufacturing and maintenance procedures? Would it be feasible to standardize on one of these methods in implementing the suggested standard? Data relating to test costs is solicited.

4. How would the availability of currently used materials that meet the flammability standards of current § 25.853 be affected by the adoption of any suggested toxicity standard? Would this availability provide a sufficient variety and quantity of materials to meet the needs of aircraft manufacturers and operators, especially with regard to seat cushions and insulation materials? Data relating to the cost of developing and producing new materials is solicited.

5. Should all airplanes operating under FAR 121 be required to meet the new standard regardless of when they were certificated? What period of time should be permitted for accomplishing the necessary retrofitting? Data substantiating the reasonableness of suggested time periods is solicited. Data relating to the cost of retrofit is also solicited.

6. Is there an interim measure that could be adopted to provide some measure of protection pending development of toxicity standards?

This advance notice of proposed rule making is issued under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 19, 1974.

R. P. SKULLY,
Director,

Flight Standards Service.

[FR Doc.74-30303 Filed 12-27-74;8:45 a.m.]

[14 CFR Part 39]

[Docket No. 74-NW-25-AD]

BOEING MODEL 747-100 AND -200
SERIES AIRPLANES

Proposed Airworthiness Directives

A proposal (NPRM) to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the installation of an additional warning system or systems with respect to the position of leading edge flaps on 747 airplanes was published in the FEDERAL REGISTER on December 19, 1974, 39 FR 43, 849.

Subsequent to issuing the NPRM, The Boeing Company has presented a design concept which would provide leading edge flap logic inputs to the takeoff aural warning system and to the pilots' annunciator panel. This concept has been discussed with representatives of the FAA, ATA and ALPA and tentatively appears to be a satisfactory means of compliance with the intent of the FAA proposal. The Boeing design will, in turn, be distributed to all domestic 747 operators for comment to be considered in this docket, and will be available from the manufacturer to all interested persons.

In consideration of the foregoing, it has been determined that the 60 day period allowed in the FAA proposal for comments is no longer needed; instead, a period of 50 days is considered adequate for public participation.

Accordingly, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), the notice of proposed rulemaking in this docket (39 FR 43, 849) is hereby amended by changing the date of February 11, 1975 to February 1, 1975.

This amendment is made under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Washington, December 20, 1974.

C. B. WALK, Jr.,

Director,

Northwest Region.

[FR Doc.74-30305 Filed 12-27-74;8:45 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 74-SO-81]

TEMPORARY RESTRICTED AREAS

Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate several temporary restricted areas in the vicinity of Fayetteville, Wilmington, Beaufort

and Washington, N.C., to contain a joint military training exercise **SOLID SHIELD 75**. The exercise would extend from May 25, 1975, through June 6, 1975. Those areas encompassing airspace at or above 14,500 feet MSL would also be included in the continental control area for the duration of their time of designation.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Ga. 30320. All communications received on or before January 29, 1975, will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW, Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendments would designate the following temporary restricted areas:

R-5309D **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 35°22'00" N., Long. 78°31'30" W.; to Lat. 35°20'30" N., Long. 78°10'00" W.; thence counterclockwise along a 10-nautical mile radius arc centered on Seymour Johnson AFB (Lat. 35°20'20" N., Long. 77°57'50" W.) to Lat. 35°10'30" N., Long. 77°59'00" W.; to Lat. 34°57'30" N., Long. 78°02'30" W.; to Lat. 35°02'00" N., Long. 78°40'00" W.; to point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309E **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 34°53'45" N., Long. 78°42'00" W.; to Lat. 34°49'20" N., Long. 78°07'20" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°24'00" N., Long. 78°42'30" W.; to Lat. 34°50'30" N., Long. 78°46'00" W.; to point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309F **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 34°24'00" N., Long. 78°42'30" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°09'30" N., Long. 78°34'30" W.; to Lat. 34°10'00" N., Long. 78°41'00" W.; to point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309A **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 35°15'00" N., Long. 77°30'00" W.; to Lat. 34°57'30" N., Long. 77°02'00" W.; thence southwest along the boundary of R-5306B, C and D to Lat. 34°42'00" N., Long. 77°17'30" W.; thence counterclockwise along connecting arcs of 8.5-mile radius circles centered on the New River MCAS (Lat. 34°42'25" N., Long. 77°26'35" W.) and the Albert J. Ellis Airport (Lat. 34°49'49" N., Long. 77°36'42" W.) to Lat. 34°55'30" N., Long. 77°42'00" W.; to Lat. 34°56'00" N., Long. 77°48'30" W.; to Lat. 35°12'15" N., Long. 77°35'00" W.; to point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309B **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 34°56'00" N., Long. 77°48'30" W.; to Lat. 34°55'30" N., Long. 77°42'00" W.; thence clockwise along an arc of 8.5-mile radius centered on Albert J. Ellis Airport (Lat. 34°49'49" N., Long. 77°36'42" W.) to Lat. 34°49'50" N., Long. 77°27'45" W.; to Lat. 34°33'00" N., Long. 77°46'30" W.; to Lat. 34°33'30" N., Long. 77°49'00" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; to point of beginning.

Designated altitudes. 5,000 feet MSL to 10,000 feet MSL, May 25-May 29, 1975 inclusive, and surface to 10,000 feet MSL, May 30-June 6, 1975, inclusive.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309C **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 34°49'50" N., Long. 77°27'45" W.; thence clockwise along an arc of 8.5-mile radius centered on the New River MCAS (Lat. 34°42'25" N., Long. 77°26'35" W.) to Lat. 34°42'00" N., Long. 77°17'30" W.; thence south and east along R-5306D and E to Lat. 34°30'20" N., Long. 77°15'50" W.; thence 3-nautical miles from and parallel to the shoreline to Lat. 34°18'00" N., Long. 77°37'30" W.; thence counterclockwise along a 13-nautical mile radius arc centered on the Wilmington VORTAC (Lat. 34°21'05" N., Long. 77°52'29" W.) to Lat. 34°33'00" N., Long. 77°46'30" W.; to point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309G **SOLID SHIELD 75, N.C.**

BOUNDARIES

Beginning at Lat. 34°57'30" N., Long. 77°02'00" W.; to Lat. 34°43'15" N., Long. 76°47'30" W.; to Lat. 34°41'30" N., Long. 76°54'30" W.; to Lat. 34°50'30" N., Long. 77°05'00" W.; to Lat. 34°49'30" N., Long. 77°10'00" W.; to point of beginning.

PROPOSED RULES

Designated altitudes. Surface to 3,000 feet MSL.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309H SOLID SHIELD 75, N. C.

BOUNDARIES

Beginning at Lat. 34°43'15" N., Long. 76°47'30" W.; to Lat. 34°38'15" N., Long. 76°42'00" W.; thence west along a line 3-nautical miles from and parallel to the shore line at Lat. 34°37'30" N., Long. 76°56'00" W.; thence north and east along R-5306C and B to point of beginning.

Designated altitudes. 1,000 feet MSL to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309I SOLID SHIELD 75, N. C.

BOUNDARIES

Beginning at Lat. 35°04'30" N., Long. 76°04'30" W.; to Lat. 35°00'30" N., Long. 76°00'30" W.; thence south and west along a line 3-nautical miles from and parallel to the shoreline to Lat. 34°38'15" N., Long. 76°42'00" W.; to Lat. 34°43'15" N., Long. 76°47'30" W.; thence east and north along R-5306 B and A to point of beginning.

Designated altitudes. 10,000 feet MSL to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309J SOLID SHIELD 75, N. C.

BOUNDARIES

Beginning at Lat. 35°18'10" N., Long. 79°14'00" W.; to Lat. 35°18'10" N., Long. 79°02'30" W.; to Lat. 35°10'30" N., Long. 79°02'30" W.; thence west along R-5311A to Lat. 35°12'30" N., Long. 79°14'00" W.; to point of beginning.

Designated altitudes. Surface to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington, ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309K SOLID SHIELD, 75, N. C.

BOUNDARIES

Beginning at Lat. 35°18'10" N., Long. 79°02'30" W.; to Lat. 35°22'00" N., Long. 78°31'00" W.; to Lat. 35°20'30" N., Long. 78°10'10" W.; thence counterclockwise along a 10-nautical mile radius arc centered on Seymour Johnson AFB (Lat. 35°20'20" N., Long. 77°57'50" W.), to Lat. 35°10'30" N., Long. 77°59'00" W.; to Lat. 34°57'30" N., Long. 78°02'30" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°09'30" N., Long. 78°34'30" W.; to Lat. 34°10'00" N., Long. 78°41'00" W.; to Lat. 34°50'30" N., Long. 78°46'00" W.; thence clockwise along a 10-nautical mile radius arc centered on Fayetteville Municipal Airport (Lat. 34°59'35" N., Long. 78°52'50" W.) to Lat. 35°00'00" N., Long. 79°04'00" W.; to Lat. 35°02'30" N., Long. 79°05'30" W.; thence north and west along R-5311A to Lat. 35°10'30" N., Long. 79°02'30" W.; to point of beginning.

Designated altitudes. 10,000 feet MSL to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309L SOLID SHIELD 75, N. C.

BOUNDARIES

Beginning at Lat. 35°10'30" N., Long. 77°59'00" W.; to Lat. 35°12'15" N., Long. 77°35'00" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; to Lat. 34°16'00" N., Long. 77°45'30" W.; to Lat. 34°09'00" N., Long. 78°20'00" W.; to Lat. 34°09'30" N., Long. 78°34'30" W.; to Lat. 34°24'00" N., Long. 78°24'00" W.; to Lat. 34°57'30" N., Long. 78°02'30" W.; to point of beginning.

Designated altitudes. 10,000 feet MSL to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

R-5309M SOLID SHIELD 75, N. C.

BOUNDARIES

Beginning at Lat. 35°32'30" N., Long. 77°09'00" W.; to Lat. 35°23'00" N., Long. 76°34'30" W.; thence southwest along R-5306A, B, C, D and E to Lat. 34°30'20" N., Long. 77°15'50" W.; thence southwesterly along a line 3-nautical miles from and parallel to the shoreline to Lat. 34°18'00" N., Long. 77°37'00" W.; to Lat. 34°16'30" N., Long. 77°45'30" W.; to Lat. 34°51'30" N., Long. 77°52'00" W.; to Lat. 35°12'15" N., Long. 77°35'00" W.; thence counterclockwise along an 8.5-mile radius arc centered on Stallings Field (Lat. 35°19'36" N., Long. 77°37'02" W.) to Lat. 35°20'00" N., Long. 77°27'00" W.; to point of beginning.

Designated altitudes. 10,000 feet MSL to FL 180.

Time of designation. Continuous, May 25-June 6, 1975, inclusive.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

Using agency. United States Atlantic Command, Norfolk, Va.

Temporary Restricted Areas R-5309H, I, J, K, L and M, defined above would also be included in the continental control area for the duration of their time of designation.

The proposed restricted areas would be used to contain a joint military training exercise, "SOLID SHIELD 75", involving coordinated amphibious/airborne assault operations. Several military units would participate; however, no ordnance would be expended (within the areas herein proposed) and also supersonic flight would be prohibited. Similar exercises have been conducted annually in the same general area for several years. As with the previous exercise, "SOLID SHIELD 75" would provide the military services with an opportunity to test and evaluate the coordination procedures used during complex joint military operations. The proposed restricted areas would be required for safety to separate nonparticipating aircraft from the extensive air activity of the participating military forces.

The Corps of Engineers has obtained, covering the period during which this exercise would be held, land use rights for approximately 1,700,000 acres within

the total area involved in this proposal. However, it contains numerous towns and privately owned buildings and other property. Although restricted areas R-5309A, B, C, D, E, F, G and J would be designated from the surface upward, the users understand that they are obligated to observe the minimum safe altitudes prescribed in § 91.79 of the Federal Aviation Regulations that are applicable to all nonparticipating persons and property on the surface.

Throughout the exercise the using agency would allow scheduled air carrier flights and other nonparticipating aircraft into or through the temporary restricted areas when exercise operations permit. The using agency would provide all necessary communication lines required by the Federal Aviation Administration and it would also provide a wide area telecommunications service number so that nonparticipating pilots can obtain clearances on an individual basis without charge to themselves. This number would be published in Part 3 of the Airman's Information Manual (AIM) effective during the exercise period. The Federal Aviation Administration would establish temporary routing to reroute air carrier and other nonparticipating aircraft around the restricted areas when clearance through the areas cannot be approved.

These amendments are proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 2348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 20, 1974.

EDWARD J. MALO,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc. 74-30309 Filed 12-27-74; 8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-GL-48]

TERMINAL CONTROL AREA DETROIT, MICH.

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Detroit, Mich., Terminal Control Area (TCA) by redefining certain lateral boundaries and floor altitudes in the vicinity of the Detroit River.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before January 29, 1975 will be considered before action is taken on the proposed amendment. The

proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, 800 Independence Avenue, SW, Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Flight beneath the 2,300-foot floor of the TCA along the Detroit River has proven restrictive to VFR flight due to obstructions along the west side of the river.

It is proposed to adjust the floor altitude from 2,300 feet to 3,000 feet in this area. This adjustment will benefit the VFR user by giving him additional space for VFR flight along the river.

This action is a result of continuous monitoring of the TCA program seeking to provide the best possible service for the airspace user.

In consideration of the foregoing, it is proposed to amend the Detroit, Mich., TCA in § 71.401 of Part 71 of the Federal Aviation Regulations to read as follows:

Area B: That airspace extending upward from 2,300 feet MSL to and including 8,000 feet MSL within a ten-mile radius of the Detroit Metropolitan Wayne County Airport excluding Area "A" previously described, that airspace east of the west edge of the Detroit River, and the Detroit, Mich., (Willow Run Airport) Control Zone.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 23, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and
Air Traffic Rules Division.

[FR Doc.74-30307 Filed 12-27-74;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 74-SW-52]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Marksville, La.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before January 29, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any

data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In Section 71.181 (39 FR 440), the following transition area is added:

MARKSVILLE, LA.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Marksville NDB (latitude 31°05'39" N., longitude 92°04'17" W.); within 3.5 miles each side of a 206° bearing from the Marksville NDB extending from the 5-mile radius area to 11.5 miles southwest of the NDB.

The proposed transition area will provide controlled airspace for aircraft executing the proposed NDB RWY 4 instrument approach procedure.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, TX., on December 19, 1974.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.74-30306 Filed 12-27-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 311-7]

IOWA

Approval of Compliance Schedules

On May 31, 1972 (37 FR § 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved portions of State plans for implementation of the national ambient air quality standards. The State of Iowa submitted to the Environmental Protection Agency compliance schedules to be considered as proposed revisions to the approved plans pursuant to 40 CFR 51.6. 40 CFR 51.8 requires the Administrator to approve or disapprove compliance schedules submitted by the states. Therefore, the Administrator proposes the approval of the compliance schedules listed below.

The approvable schedules were adopted by the State and submitted to the Environmental Protection Agency after notice and public hearings in accordance with the procedural requirements of 40 CFR 51.4 and 51.6 and the substantive

requirements of 40 CFR 51.15 pertaining to compliance schedules. The compliance schedules have been reviewed and determined to be consistent with the approved control strategies of Iowa. Each approved revision establishes a new date by which the individual source must comply with the applicable emission limitation in the federally-approved State Implementation Plan. This date is indicated in the table below, under the heading "Final Compliance Date." In all cases, the schedules include incremental steps toward compliance with the applicable emission limitations. While the tables below do not include these interim dates, the actual compliance schedules do.

Under Iowa law, the compliance schedule is not enforceable after the date on which the associated variance expires and variances cannot extend for more than one year. Therefore, to the extent that the schedules extend past the variance expiration date, they are not legally enforceable at this time. For this reason, EPA's approval of each compliance schedule will be unconditional only as to that part of the schedule covered by the initial variance. Approval of the remainder of the schedule will be conditioned upon the State's renewal of the variance in identical form and substance to that included in the schedule submitted to the Environmental Protection Agency and approved herein. If the variance is renewed in this manner, the condition precedent will be satisfied and the approval of the next segment of the schedule would not require further action by the State or this Agency. If the variance is not renewed, or is modified from the version that had been federally-approved, the condition will not be fulfilled, the approval of the remainder of the schedule would not be effective, and the State's immediately-effective regulation would again become federally enforceable.

Provisional approval of final compliance dates and extensions of variances is justifiable only because of the one-year variance limitation in the law of Iowa. Since there will be no substantive changes in the schedules set forth below and public hearings were held on the complete schedule, there is no reason to require compliance with 40 CFR 51.6 procedures at the time Iowa renews each variance. The schedules were immediately effective on the date of adoption. An Effective Date is not indicated on the table. The Variance Expiration Date is included instead.

The following compliance schedules for Clinton Corn Processing Company, Clinton, which appeared in the FEDERAL REGISTER of September 23, 1974 (39 FR 30465), are hereby withdrawn. The new Final Compliance Dates extend beyond the July 31, 1975, attainment date and cannot be approved. The Environmental Protection Agency, Region VII, has issued an Administrative Order for these sources. The sources are: Raymond Dryers Nos. 1 and 2, and Heil Dryers Nos. 1, 2, 3, 4, and 5.

The Variance Expiration Date for Hawkeye Chemical Company, Clinton, shown in the FEDERAL REGISTER of September 24, 1974 (39 FR 34300), was in-

PROPOSED RULES

correct. The schedule is repropounded in this FEDERAL REGISTER.

In the indication of proposed approval of individual compliance schedules, the individual schedules are included by reference only. In addition, since the large number of compliance schedules preclude setting forth detailed reasons for approval of individual schedules in the FEDERAL REGISTER, an evaluation report has been prepared for each individual compliance schedule. Copies of these evaluation reports are available for public inspection at the Environmental Protection Agency Regional Office, 1735 Baltimore, Kansas City, Missouri. The compliance schedules and the State Implementation Plans are available for public inspection at the Environmental Protection Agency Regional Office; Environmental Protection Agency, Division of Stationary Source Enforcement, 401 M Street, Washington, D.C.; and the Iowa Department of Environmental Quality, 3920 Delaware, Des Moines, Iowa.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the Region VII

office at the above address. All comments submitted on or before January 29, 1975, will be considered. Receipt of comments will be acknowledged but substantive responses will not be provided. All comments received, as well as copies of the applicable implementation plans, will be available for inspection during normal business hours at the Regional Office.

The proposed rulemaking is issued under authority of section 110(a) of the Clean Air Act, as amended, (42 U.S.C. 1857c-5).

Dated: December 6, 1974.

EARL J. STEPHENSON,
Acting Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart Q—Iowa

1. In § 52.825, the table in paragraph (c) is amended as follows:

§ 52.825 Compliance Schedules.

(c) * * *

Iowa

Source	Location	Regulation involved	Date adopted	Variance expiration date	Final compliance date
Farmers Elevator Co.: Cyclone on feed mill.	Walcott.....	4.4(6)	Sept. 12, 1974	Dec. 28, 1974	Dec. 28, 1974
Clinton Corn Processing Co.: Louisville dryers Nos. 12, 13, 14, and 15.	Clinton.....	4.4(7)	do.....	Dec. 31, 1974	Dec. 31, 1974
Delta Asphalt Paving, Inc.: Asphaltic concrete plant.	Crescent.....	4.4(2)	do.....	July 1, 1975	July 1, 1975
Ralston Furina Co.: Bean cleaner.	Iowa Falls.....	4.4(7)	do.....	Apr. 18, 1975	Apr. 18, 1975
Northwestern States Portland Cement Co.:					
(a) Kila No. 1 baghouse by-pass.	Mason City.....	4.4(3)	do.....	June 20, 1975	July 18, 1975
(b) Silo dust vent.	do.....	4.3(2)a	do.....	do.....	Do.
(c) No. 5 cement storage vent.	do.....	4.3(2)a	do.....	do.....	Do.
Associated Sanitarians, Inc.: Asphaltic concrete plant.	Denison.....	4.4(2)	do.....	June 30, 1975	June 30, 1975
Jack Stanley Co.: Asphaltic concrete plant.	Glenwood.....	4.4(2)	Sept. 12, 1974	July 1, 1975	July 1, 1975
Cargill, Inc.:					
(a) Cyclone on head house.	Council Bluffs.....	4.4(6), 4.4(7)	Nov. 14, 1974	June 15, 1975	June 15, 1975
(b) Cyclone on truck loading.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
Farmers Union Grain Terminal Association: Cyclones on head house.	Sioux City.....	4.4(7)	Sept. 12, 1974	July 15, 1975	July 15, 1975
Deere and Co.: Boiler No. 3.	Ottumwa.....	4.3(2)d	do.....	Apr. 1, 1975	Apr. 1, 1975
Central Soya Co., Inc.:					
(a) Tunnel aspiration system.	Belmond.....	4.4(6), 4.4(7)	Nov. 14, 1974	July 31, 1975	July 31, 1975
(b) Garner bin vents.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
(c) Bulk meal conveying system.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
(d) Upper house aspiration system.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
Land O'Lakes:					
(a) Cyclone from legs and belts of elevator.	Fort Dodge.....	4.4(6), 4.4(7)	Nov. 14, 1974	June 1, 1975	June 1, 1975
(b) Pod grinder cyclone.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
(c) Elevator classifier cyclone.	do.....	4.4(6), 4.4(7)	do.....	do.....	Do.
Norris Construction Co.: Asphaltic concrete plant No. 261.	Ottumwa.....	4.4(2)	do.....	do.....	Do.
Iowa Steel and Wire Co.: Ladle landing.	Centerville.....	4.3(2)a	do.....	do.....	Do.
Cessford Construction Co.: Asphaltic concrete plant.	LeGrand.....	4.4(2)	do.....	do.....	Do.
Perry Asphalt Co., Inc.: Asphaltic concrete plant.	Perry.....	4.4(2)	do.....	do.....	Do.
Kelsey-Hayes—French & Hecht division: boilers Nos. 1 and 2.	Davenport (Bettendorf).....	4.3(2)b	Sept. 12, 1974	July 15, 1975	July 15, 1975
Eastern Iowa Light & Power Co.: Boilers Nos. 1 and 2.	Wilton Junction.....	4.3(2)b	Nov. 14, 1974	May 15, 1975	May 15, 1975
Aluminum Co. of America:					
(a) A-3 ingot plant—rotary barrels.	Davenport.....	4.3(2)a	do.....	May 31, 1975	May 31, 1975
(b) A-5 ingot plant—skim house.	do.....	4.3(2)a	do.....	do.....	Do.
Iowa Electric Light & Power Co.:					
(a) Boiler No. 3.	Iowa Falls.....	4.3(2)b	Sept. 12, 1974	Jan. 1, 1975	Jan. 1, 1975
(b) Boiler No. 4.	do.....	4.3(2)b	do.....	June 30, 1975	June 30, 1975
The Dexter Co.: Cupola.	Fairfield.....	4.4(4)	Nov. 14, 1974	Dec. 10, 1974	Dec. 10, 1974
L. Benn & Sons: Cupola.	Centerville.....	4.4(4)	do.....	Apr. 1, 1975	Apr. 1, 1975
Newton Foundry Co.: Cupola.	Newton.....	4.4(4)	do.....	June 15, 1975	June 15, 1975
Clow Corp.: Cupola.	Oskaloosa.....	4.4(4)	do.....	Jan. 1, 1975	Jan. 1, 1975
Hawkeye Chemical Co.:					
(a) Neutralizer.	Clinton.....	4.3(2)a, 4.3(2)d	June 20, 1974	Mar. 14, 1975	May 31, 1975
(b) Prill tower.	do.....	4.3(2)a, 4.3(2)d	do.....	do.....	Do.
(c) Evaporator at prill tower.	do.....	4.3(2)a, 4.3(2)d	do.....	do.....	Mar. 15, 1975

[FR Doc.74-30013 Filed 12-27-74; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20215]

CALIBRATION OF REMOTE CONTROL INSTRUMENTS

Order Extending Time for Filing Reply Comments

1. On October 22, 1974, the Commission adopted a notice of proposed rulemaking in the above-entitled proceeding. Publication was given in the FEDERAL REGISTER on November 1, 1974, 39 FR 38668. The time for filing comments has expired and the date for filing reply comments is December 16, 1974.

2. On December 16, 1974, A. Earl Culum, Jr. and Associates (A. Earl Culum), requested that the time for filing reply comments be extended. A. Earl Culum states that it has made a request of the Commission's contractor for a list of the parties who may have filed comments in the proceeding and requested expedited action on the order but as of December 13 they have had no response to their request. They are therefore requesting additional time so that they may file reply comments after receiving the requested information.

3. We are of the view that the public interest would be served by extending the time in this proceeding. Accordingly, It is ordered, That the date for filing reply comments is extended to and including January 3, 1975.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.281 of the Commission's rules.

Adopted: December 19, 1974.

Released: December 20, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] HAROLD L. KASSENS,
Acting Chief,
Broadcast Bureau.

[FR Doc.74-30314 Filed 12-27-74; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210]

[No. 36057]

ACCOUNTING FOR TREASURY STOCK AT COST, TRANSACTIONS WITH AFFILIATES AND CHARGES TO BE JUST AND REASONABLE

Notice of Proposed Rulemaking

DECEMBER 23, 1974.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C. on 5th day of November, 1974.

This proceeding is being instituted on our own motion to consider revisions to each of the uniform systems of accounts in three areas: (1) Accounting for treasury stock, (2) instructions for transactions with affiliates, and (3) instruction for charges to be just and reasonable. If

these proposals are adopted, the substance of all ten uniform systems of accounts prescribed by the Commission will be consistent in these three areas. While the three subject areas differ, we are proposing that they be considered in the same proceeding. This facilitates making accounting changes in a more timely manner which we feel is beneficial to all interested parties.

Under the present regulations most modes use the par value method of accounting for treasury stock. Only the uniform system of accounts for freight forwarders prescribes the cost method. The cost method of accounting for treasury stock is more widely used than the par value method by the accounting profession and other regulatory agencies. It is our intent that if the cost method of accounting for treasury stock is adopted, all treasury stock presently held shall be reaccounted for under the cost method provided that it has not been constructively retired.

The instruction for transactions with affiliated companies is presently in the uniform system of accounts for Railroad Companies and the uniform system of accounts for Motor Carriers of Property.

The instruction for charges to be just and reasonable is in the system of accounts for Motor Carriers of Property.

The intent of these proposals is to add more definitive guidelines to the uniform system of accounts, and to prescribe consistent guidelines in these three areas for all modes of surface transportation. In addition, the adoption of these proposals would bring us closer in aligning the Commission's accounting rules for financial reporting purposes with generally accepted accounting principles.

Our intent is that the proposed revisions to the accounting regulations become effective immediately upon adoption by the Commission and would be reflected in the books of accounts for the year beginning January 1, 1975.

Upon consideration of the above described matters and good cause appearing therefor:

It is ordered, That a proceeding be, and it is hereby, instituted under the authority of sections 20, 204, 313 and 412 of the Interstate Commerce Act and pursuant to sections 553 and 559 of the Administrative Procedure Act with a view to adopting the proposed regulations set forth in Appendices A through J of this Notice, and for the purpose of taking such other and further action as the facts and circumstances may justify and require.

It is further ordered, That all carriers subject to the Interstate Commerce Act be, and they are hereby, made respondents in this proceeding.

It is further ordered, That no oral hearing be scheduled for the receiving of testimony in this proceeding unless a need therefor should later appear, but that respondents or any other interested parties may participate in this proceeding by submitting for consideration written statements of fact, views, and arguments on the subjects mentioned

above, or any other subjects pertaining to this proceeding.

It is further ordered, That any interested persons wishing to submit written statements of fact, views, or arguments shall file an original (and, if possible, 15 copies) of such representations with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, by January 27, 1975, and that all such statements will be considered as evidence and as a part of the record in this proceeding.

It is further ordered, That written material or suggestions submitted shall be made available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C., during regular business hours.

And it is further ordered, That service of this notice shall be made on all affected carriers; and to the Governor of every State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation; and that notice of this proceeding shall be given to the general public by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and by delivering a copy thereof to the Director, Division of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons.

By the Commission.

[SEAL]

ROBERT L. OSWALD,
Secretary.

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

PART 1201—UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

LIST OF INSTRUCTIONS AND ACCOUNTS

In the table of contents under "General Instructions" add the following immediately after line item "1-21 Submission of questions":

1-22 Charges to be just and reasonable.

Under "General Balance Sheet Accounts" add the following immediately after line item "798 Retained income; unappropriated":

798.5 Treasury stock.

GENERAL INSTRUCTIONS

The text of instruction 1-10, "Transactions with affiliated companies" is revised to read:

1-10 Transactions with affiliated companies. (a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about

particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transaction.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature, and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 1-22).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1-3(d)) for the purpose of recording separately transactions with affiliated companies.

After general instruction 1-21 "Submission of Questions", add new instruction 1-22 "Charges to be just and reasonable" to read as follows:

1-22 Charges to be just and reasonable. All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's-length transaction. Any payments in excess of such just and reasonable charges shall be included in account 551, "Miscellaneous income charges".

INSTRUCTIONS FOR INCOME AND BALANCE SHEET ACCOUNTS

The instruction 6-4, "Discount, premium, and assessment on capital stock" is amended by revising paragraphs (e) through (g). As amended the text reads as follows:

Discount, premium, and assessment on capital stock. * * *

* * * * *

(e) When capital stock is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 791, "Capital Stock Issued". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 795, "Paid-In Surplus". However, the excess of a debit over the balance carried in account 795, "Paid-In Surplus", with respect to the particular class of stock, shall be charged to account 616, "Other Debits to Retained Income".

(f) When capital stock is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 798.5, "Treasury Stock".

(g) When Treasury Stock is resold, account 798.5, "Treasury Stock", will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 798.5, "Treasury Stock", shall be debited or credited as appropriate to account 795, "Paid-In Surplus". (See paragraph (e) above).

GENERAL BALANCE SHEET ACCOUNTS

The text of account 791 "Capital Stock Issued" paragraph (a) is revised and Note E deleted. As amended the text reads:

791 Capital Stock Issued.

(a) This account shall include the total par value of par value stock, and the total amount paid in or the amount approved by the Commission for stock without par value, for all shares of capital stock or other form of proprietary interest in the accounting company which have been issued to bona fide purchasers and have not been reacquired and canceled, also shares of stock nominally issued.

After the text of account 798, "Retained Income; Unappropriated", the following new account number, title and text are added:

798.5 Treasury Stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 6-4, paragraphs (e) through (g).

Account 799, "Form of General Balance Sheet Statement", is revised by

adding the following new account number and title:

799 Form of General Balance Sheet Statement.

798 * * * * *

798.5 Treasury stock * * * * *

PART 1202—UNIFORM SYSTEM OF ACCOUNTS FOR ELECTRIC RAILWAYS

LIST OF INSTRUCTIONS AND ACCOUNTS

In table of contents under "Operating Expenses" add the following after line item 01-16 *Accounting for income taxes*:

01-17 Transactions with affiliated companies.

01-18 Charges to be just and reasonable.

Under "General Balance Sheet Accounts" add the following immediately after line item "425 Premium on capital stock."

426 Treasury stock.

OPERATING EXPENSES, GENERAL INSTRUCTIONS

After the text of instruction 01-16 "Accounting for Income Taxes", new instructions 01-17 and 01-18 are added to read as follows:

01-17 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 day of the request. We do not intend the file to include data relating to ordinary carrier interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the

charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 1-18).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts for the purpose of recording separately transactions with affiliated companies.

01-18 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 225, "Miscellaneous Debits".

GENERAL BALANCE SHEET

The instruction 05-2 "Discount and premium on capital stock" is amended by revising the last three paragraphs and designating the first three paragraphs as (a), (b) and (c), respectively. As amended the text reads:

05-2 Discount and premium on capital stock.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 423, "Capital stock". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 448(a), "Paid-In Surplus". However, the excess of a debit over the balance carried in account 448(a), "Paid-In Surplus", with respect to the particular class of stock, shall be charged to account 420, "Other unadjusted debits".

(e) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 426, "Treasury Stock".

(f) When Treasury Stock is resold, account 426, "Treasury Stock", will be credited with the cost paid for it. Any

difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 426, "Treasury Stock", shall be debited or credited as appropriate to account 448(a), "Paid-In Surplus". (See paragraph (d) above).

Instruction "05-7 Form of general balance sheet statements" is revised by adding the following line items:

* * * * *

425 * * * * *

426 Treasury Stock

Total

* * * * *

GENERAL BALANCE SHEET ACCOUNTS

Account 425 "Premium on capital stock" is revised to read:

425 Premium on capital stock.

(a) This account shall include the excess of the actual cash value (at the time of sale of the stock) of the consideration received over the amount recorded in account 423, "Capital stock," for par value stock plus accrued dividends, if any; also subsequent assessments against stockholders for payments required in excess of the par value or other amount recorded in account 423, "Capital stock."

(b) When capital stock is retired and canceled, the amount in this account with respect to the shares of such stock retired and canceled shall be charged hereto.

After the text of account 426, "Premium on capital stock" the following new account number, title and text are added:

426 Treasury Stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Total stock.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 05-2, paragraphs (d) through (f).

1203—UNIFORM SYSTEM OF ACCOUNTS FOR EXPRESS COMPANIES

LIST OF INSTRUCTIONS AND ACCOUNTS

In Table of Contents under "General Instructions" add the following immediately after line item 1-18 "Accounting for Income taxes".

1-19 Transactions with affiliated companies.

1-20 Charges to be just and reasonable.

Under "Balance Sheet Account Classifications" add the following immediately after line item "255 Retained income":

256 Treasury stock.

GENERAL INSTRUCTIONS

Instruction "1-2 Accounting scope", paragraph (d), is amended by adding line item "256 Treasury stock" in proper sequence.

* * * * *

256 Treasury stock.

* * * * *

After general instruction 1-18 "Accounting for income taxes", add the new instructions 1-19 "Transactions with affiliated companies" and 1-20 "Charges to be just and reasonable" to read as follows:

1-19 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 1-20.)

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1-3(a)) for the purpose of recording

separately transactions with affiliated companies.

1-20 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 731 "Miscellaneous expenses."

BALANCE SHEET ACCOUNT CLASSIFICATIONS

The text of account 251 "Preferred stocks" paragraphs (a) and (b) is revised to read:

251 Preferred stock.

(a) This account shall include the par value of par value stock, stated value of no-par value stock and the amount received for no-par value stock without stated value, which have been issued to bona fide purchasers and have not been reacquired and cancelled. When other than cash is received for no-par value stock without stated value, the fair market value of the consideration shall be entered in the account.

(b) This account shall be divided so as to show separately each class of stock issued, subdivided between issued and actually outstanding, nominally issued be entered in this account.

* * * * *

The text of account 252 "Common stock", paragraphs (a) and (b) is revised to read:

252 Common stock.

(a) This account, as subdivided below, shall include the par value of par value stock, stated value of no-par value stock and the amount received for no-par value stock without stated value, which have been issued to bona fide purchasers and have not been reacquired and cancelled. When other than cash is received for no-par value stock without stated value, the fair market value of the consideration shall be entered in this account.

(b) This account shall be divided so as to show separately each class of stock issued, subdivided between issued and actually outstanding, nominally issued and nominally outstanding.

* * * * *

The text of account 254 "Capital surplus", paragraph (c) is revised: As amended the paragraph reads:

254 Capital surplus.

* * * * *

(c) 02 Other capital surplus. (1) When an issue of capital stock or any part thereof is required, either by purchase

or donation, and is retired or cancelled, the par value shall be charged to account 251 "Preferred stock" or 252 "Common stock". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in this account. However, the excess of a debit over the balance carried in this account, with respect to the particular class of stock, shall be charged to account 255-08—other debits.

(2) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 256-Treasury stock.

(3) When Treasury stock is resold, account 256-Treasury stock, will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 256-Treasury stock, shall be debited or credited as appropriate to this account. (See paragraph (1) above.)

After the text of account 255 "Retained income", the following new account number, title and text are added:

256 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Balance sheet account classification 254-(c)-02, paragraphs (1) through (3).

Account 299 "Form of balance sheet" is revised by adding the following:

299 Form of balance sheet.

256 Treasury stock.....()
Total Shareholders' Equity.....

PART 1204—UNIFORM SYSTEM OF ACCOUNTS FOR PIPELINE COMPANIES

LIST OF INSTRUCTIONS AND ACCOUNTS

In table of contents under "General Instructions", add the following after line item 1-12 "Accounting for Income taxes".

1-13 Transactions with affiliated companies.
1-14 Charges to be just and reasonable.

Under "Balance Sheet Accounts" add the following immediately after line item 75 "Unappropriated retained income".

76 Treasury stock.

GENERAL INSTRUCTIONS

After general instruction 1-12 "Accounting for income taxes", add the new instruction 1-13 "Transactions with affiliated companies" and 1-14 "Charges to be just and reasonable" to read as follows:

1-13 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 1-14.)

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1-2(a)) for the purpose of recording separately transactions with affiliated companies.

1-14 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the

carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 660, Miscellaneous Income Charges.

BALANCE SHEET ACCOUNTS

The text of account 70 "Capital stock" is revised to read:

70 Capital stock.

(a) This account shall include the par value of par value stock, stated value of no-par stock, and the amount received for no-par stock without stated value, which have been issued to bona fide purchasers and have not been reacquired and canceled, also shares of stock nominally issued. When other than cash is received for no-par value stock, the fair market value of the consideration shall be entered in this account.

(b) This account shall be divided so as to show separately each class of stock issued, subdivided between (1) issued and actually outstanding, and (2) nominally issued and nominally outstanding.

(c) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to this account. Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 73, Additional Paid-In Capital. However, the excess of a debit over the balance carried in account 73 with respect to the particular class of stock, shall be charged to account 720, Other Debits to Retained Income.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 76, Treasury Stock.

(e) When Treasury Stock is resold, account 76, Treasury Stock, will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 76, shall be debited or credited as appropriate to account 73, Additional Paid-In Capital. (See paragraph (c) above.)

After the text of account 75 "Unappropriated retained income" the following new account number, title and text are added:

76 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged or unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Balance sheet account 70, paragraphs (c) through (e).

Account 797 "Form of general balance sheet" is revised by adding the following:

797 Form of general balance sheet.

76 Treasury stock.
Total Stockholders' Equity

AMEND PART 1205—UNIFORM SYSTEM OF ACCOUNTS FOR REFRIGERATOR CARLINES

LIST OF INSTRUCTIONS AND ACCOUNTS

In table of contents under "Income and Balance Sheet Accounts Instructions" add the following immediately after line item 42 "Accounting for Income taxes".

43 Transactions with affiliated companies.
44 Charges to be just and reasonable.

Under "General Balance Sheet Accounts Text" add the following immediately after line item 798 "Retained income—Unappropriated".

798.5 Treasury stock.

INCOME AND BALANCE SHEET ACCOUNT INSTRUCTIONS

Instruction 39 "Discount, premium, and assessment in capital stock" is amended by designating the present paragraphs, paragraphs (a) through (g) and by revising the last three paragraphs. As amended the text reads:

39 Discount, premium, and assessment on capital stock.

(e) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 791, "Capital stock issued". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 795, "Paid-in surplus". However, the excess of a debit over the balance carried in account 795, "Paid-in surplus", with respect to the particular class of stock, shall be charged to account 616, "Other debits to retained income".

(f) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 798.5, "Treasury stock".

(g) When Treasury Stock is resold, account 798.5, "Treasury stock", will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to

account 798.5, "Treasury stock", shall be debited or credited as appropriate to account 795, "Paid-in surplus". (See paragraph (e) above).

After instruction 42 "Accounting for Income taxes", add the new instruction 43 "Transactions with affiliated companies" and instruction 44 "Charges to be just and reasonable" to read as follows:

43 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 44.)

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 4(b)) for the purpose of recording separately transactions with affiliated companies.

44 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other

carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 551, "Miscellaneous income charges".

GENERAL BALANCE SHEET ACCOUNTS

The text of accounts 791 "Capital Stock Issued" is amended by revising the first paragraph and deleting note E. As amended the text reads:

791 Capital stock issued.

This account shall include the total par value of par value stock, and the total amount paid in for stock without par value, for all shares of capital stock or other form of proprietary interest in the accounting company which have been issued to bona fide purchasers and have not been reacquired and cancelled, also shares of stock nominally issued.

After the text of account 798 "Retained income—Unappropriated", the following new account number, title and text are added:

798.5 Treasury Stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 39, paragraphs (5) through (7).

Account 799 "Form of general balance sheet statement", is revised by adding the following:

799 Form of general balance sheet statement.

Total retained income
798.5 Treasury stock
Total shareholders' equity

PART 1206—UNIFORM SYSTEM OF ACCOUNTS FOR COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS

LIST OF DEFINITIONS, INSTRUCTIONS, AND ACCOUNTS

In Table of Contexts under "Instructions" add the following immediately after line item 2-32 "Accounting for the Income taxes":

2-33 Transactions with affiliated companies.
2-34 Charges to be just and reasonable.

Under "Balance Sheet Accounts" add the following immediately after line 2946 "Other debits to surplus":

2947 Treasury stock.

PROPOSED RULES

INSTRUCTIONS

The text of instruction 2-14 "Company securities owned" is amended by revising paragraph (a) to read:

2-14 Company securities owned.

(a) **Capital stock.** (1) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 2700, Preferred Capital Stock, or account 2710, Common Capital Stock. Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 2900, Unearned Surplus. However, the excess of a debit over the balance carried in account 2900, with respect to the particular class of stock, shall be charged to account 2946, Other Debits to Surplus.

(2) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 2947, Treasury Stock.

(3) When Treasury Stock is resold, account 2947, Treasury Stock, will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 2947, shall be debited or credited as appropriate to account 2900, Unearned Surplus. (See paragraph (1) above).

After instruction 2-32 "Accounting for Income taxes", add the new instructions 2-33 "Transactions with affiliated companies" and 2-34 "Charges to be just and reasonable" to read as follows:

2-33 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 2-34.)

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 2-2(d)) for the purpose of recording separately transactions with affiliated companies.

2-34 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in account 7500, Other Deductions.

BALANCE SHEET ACCOUNTS

The text of account 1920 "Reacquired securities" is revised to read:

1920 Reacquired securities.

This account shall include in subdivisions for each class, the face, par, or stated value of bonds, and other forms of securities which have been actually issued or assumed by the carrier, and reacquired and are neither retired nor properly included in sinking or other funds.

After the text of account 2946 "Other debits to surplus," the following new account number, title, and text are added:

2947 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 2-14, paragraph (a).

Account 2999 "Form for balance sheet statement" is amended to read:

2999 Form for balance sheet statement.

Capital Stock:	
2700 Preferred Capital Stock	-----
Less: Nominally Issued	-----
2710 Common Capital Stock	-----
Less: Nominally Issued	-----
2720	-----

Total Unappropriated Surplus	-----
2947 Treasury Stock	-----
Total Liabilities	-----

PART 1207—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

LIST OF INSTRUCTIONS

In table of contents under "Instructions" amend line item 34 "Transactions with affiliates" to read:

34 Transactions with affiliated companies.

CLASS I AND CLASS II MOTOR CARRIER INSTRUCTIONS

The text of instruction 4 "Charges to be just and reasonable" is amended to read as follows:

4 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's length transaction. Any payments in excess of such just and reasonable charges shall be included in Account Series 8400—Other Nonoperating Income (Net) (Class II), and Account 8420—Other Nonoperating Deductions (Class I).

The instruction 16 "Capital Stock" is amended by revising paragraphs (d) and (e). As amended the text reads as follows:

16 Capital Stock.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 2610, Capital Stock (Class II), and account 2611—Capital Stock—Preferred; or 2612—Capital Stock—Common (Class I); if cancelled. Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase,

and any premium or discount applicable to the original sale, shall be included in account 2641—Other Capital in Excess of Par or Stated Value (Class I and II). However, the excess of a debit over the balance carried in account 2641 with respect to the particular class of stock, shall be charged to account 2661—Other Debits to Retained (Classes I and II).

(e) (1) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 2661—Treasury Stock (Classes I and II).

(2) When Treasury Stock is resold, account 2661—Treasury Stock (Classes I and II), will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 2661, shall be debited or credited as appropriate to account 2641—Other Capital in Excess of Par or Stated Value (Classes I and II). See paragraph (d) above.

The title and text of instruction 34 "Transactions with affiliates" are amended to read as follows:

34 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a

representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 4).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 2(e)) for the purpose of recording separately transactions with affiliated companies.

**CLASS I AND CLASS II MOTOR CARRIERS
BALANCE SHEET ACCOUNTS EXPLANATIONS**

Account 2612 "Capital Stock—Common (class I)" is amended by revising paragraph (a). As amended the text reads:

2612 Capital Stock—Common (class I).

(a) These accounts 2611 and 2612, shall include the par value of stock with par value; the stated value of nonpar stock having a stated value; and the case value of the consideration received, including assessments, or the amount approved by the Commission, for nonpar stocks without stated value, which have been issued to bona fide purchasers and have not been reacquired and canceled; also shares of stock nominally issued (see definition 29). The cash consideration received from the sale of par value stock and of nonpar stock having a stated value in excess of the amount credited to this account, shall be credited to account 2631—Premiums and Assessments on Capital Stock. (See Instruction 16).

Account 2631 "Premiums and Assessments on Capital Stock (class I and II)", is amended by revising paragraph (d). As amended the text reads:

2631 Premiums and Assessments on Capital Stock (classes I and II).

(d) When capital stock is retired and canceled, the amount in this account with respect to the shares of such stock retired and canceled shall be charged hereto.

Account 2661 "Treasury Stock (classes I and II)", is revised to read as follows:

2661 Treasury Stock (classes I and II).

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 16, paragraph (d) through (e)(2).

PART 1209—UNIFORM SYSTEM OF ACCOUNTS FOR INLAND AND COASTAL WATERWAYS CARRIERS

LIST OF INSTRUCTIONS AND ACCOUNTS

In Table of Contents under "General Instructions" the following new line items are added:

- 14 Transactions with affiliated companies.
- 15 Charges to be just and reasonable.

Under "Balance Sheet Accounts" the following new line item is added:

- 280-1 Treasury stock.

GENERAL INSTRUCTION

After the text of instruction 13 "Accounting for Income taxes," the following new account numbers, titles and texts are added:

- 14 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental cost related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as

charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 15).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1(e) 1) for the purpose of recording separately transactions with affiliated companies.

15 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's-length transaction. Any payments in excess of such just and reasonable charges shall be included in account 527, "Miscellaneous income charges."

BALANCE SHEET INSTRUCTIONS

Balance sheet instruction 24 "Company securities owned," is revised to read as follows:

24 Company securities owned.

Securities actually issued or assumed by the carrier which have been reacquired shall be either retired or if not retired, carried in accounts 280-1, "Treasury stock" or 190, "Reacquired and nominally issued long-term debt," unless it is required by provisions of a mortgage or by decision of a trustee, not subject to control by the carrier, that funded debt securities be retained alive in sinking or other special funds. Reacquired securities not retired shall be shown at the amount paid for such stock.

Balance sheet instruction 26 "Discount, expense, and premium on capital stock" is amended by revising paragraphs (d) and (e) and adding (f). As amended the text reads:

26 Discount, expense, and premium on capital stock.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or canceled, the par value shall be charged to account 240, "Capital Stock". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 250-2, "Paid-in surplus". However, the excess of a debit over the balance carried in account 250-2, "Paid-in surplus", with respect to the particular class of stock, shall be charged to account 285, "Miscellaneous debits".

(e) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or canceled, nor properly includible in sinking or other funds, the reacquisition

cost shall be charged to account 280-1, "Treasury stock".

(f) When Treasury stock is resold, account 280-1, "Treasury stock", will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account 280-1, "Treasury stock", shall be debited or credited as appropriate to account 250-2, "Paid-in surplus". (See paragraph (d) above).

BALANCE SHEET ACCOUNTS

The title, text, and note of account 191 "Reacquired and nominally issued capital stock", is revised to read as follows:

191 Nominally issued capital stock.

This account shall include the par value of capital stock of the carrier nominally issued. If no par stock, it shall be charged at the pro rata proportion at which it is credited to account 240, "Capital stock". Stock having no par value classifiable as nominally issued shall be recorded by the number of shares.

NOTE: The accounting for the reacquisition and resale of capital stock actually issued or assumed by the company shall be in accordance with instruction 26 (d) through (f).

Account 240, "Capital stock" will be amended by revising paragraph (e). As amended the text reads:

240 Capital stock.

(e) In case capital stock is reacquired and held in the treasury such stock shall be included in the appropriate accounts in accordance with paragraphs (d) through (f) of instruction 26.

Account 243 "Discount and expense on capital stock", is amended by revising paragraph (b). As amended the text reads:

243 Discount and expense on capital stock.

(b) When capital stock is retired and canceled, the amount in this account with respect to the shares of such stock retired and canceled shall be credited hereto.

Account 250-1 "Premiums and assessments on capital stock", is amended by revising paragraph (b). As amended the text reads:

250-1 Premiums and assessments on capital stock.

(b) When capital stock is retired and canceled, the amount in this account with respect to the shares of such stock retired and canceled shall be charged hereto.

After the text of account 280 "Retained income—Unappropriated", the following new account number, title, and text are added:

280-1 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition

cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or canceled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with instruction 26, paragraph (d) through (f).

Account 299 "Form of balance sheet statement", is revised as follows:

299 Form of balance sheet statement.

191	Nominally issued capital stock.	
280		
	Total retained income	-----
280-1	Treasury stock	-----
	Total capital and surplus	-----

PART 1210—UNIFORM SYSTEM OF ACCOUNTS FOR FREIGHT FORWARDERS

LIST OF INSTRUCTIONS AND ACCOUNTS

In table of contents under "General Instructions" the following new line items are added:

- 9 Transactions with affiliated companies.
- 10 Charges to be just and reasonable.

Under "General Balance Sheet Accounts", the line item 280 "Reacquired capital stock" is revised to read:

280 Treasury stock.

GENERAL INSTRUCTIONS

After the text of instruction 8 "Accounting for Income taxes", the following new account numbers, titles and texts are added:

9 Transactions with affiliated companies.

(a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, upon a Commission request, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g., lawful tariff charges or interchange of equipment).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may

constitute a file within the meaning of this instruction.

(d) The carrier shall record as the cost of assets or services received from an affiliated supplier, their invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any differences between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 10).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1 (e) 1) for the purposes of recording separately transactions with affiliated companies.

10 Charges to be just and reasonable.

All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and necessary to the honest and efficient operations and management of the carrier business. Payments should not exceed the fair market value of goods and services acquired in an arm's-length transaction. Any payments in excess of such just and reasonable charges shall be included in account 414, "Miscellaneous income charges".

GENERAL BALANCE SHEET INSTRUCTIONS

The text of instruction 23 "Company securities owned", is revised to read as follows:

23 Company securities owned.

Securities actually issued or assumed by the company which have been reacquired and not retired, shall be carried in account 280, "Treasury stock" or 190, "Reacquired and nominally issued long-term debt", unless it is required by provisions of a mortgage or by decision of a trustee not subject to control by the company, that such securities be retained alive in sinking or other special funds. Reacquired long-term debt not retired shall be shown at par or face value, and reacquired capital stock not retired shall be shown at the amount paid for such stock.

Instruction 24 "Discount, premium, and expense on capital stock" is amended by revising paragraphs (d), (e) and adding (f). As amended the text reads:

24 Discount, premium, and expense on capital stock.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to account 240, "Capital stock". Any difference between par value and the reacquisition cost, including commission, other expenses incurred in the purchase, and any premium or discount applicable to the original sale, shall be included in account 250-1, "Paid-in surplus". However, the excess of a debit over the balance carried in account 250-1, "Paid-in surplus", with respect to the particular class of stock, shall be charged to account 310, "Miscellaneous debits".

(e) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 280, "Treasury stock".

(f) When Treasury Stock is resold, account 280, "Treasury stock", will be credited with the cost paid for it. Any difference between the total amount realized from the sale of treasury stock (less commission and expenses incident thereto), and the amount credited to account

280, "Treasury stock", shall be debited or credited as appropriate to account 250-1, "Paid-in surplus". (See paragraph (d) (above)).

Instruction 28, "Form of general balance sheet statement", is amended as follows:

28 Form of general balance sheet statement.

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270 * * *
      Surplus prior to January 1, 1943:
      ---- balance
280 Treasury stock
      Pledged
      Unpledged
  
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The text of account 191 "Nominally issued capital stock", is amended to read:

191 Nominally issued capital stock.

This account shall include the par value, or with respect to no par stock, the amounts recorded in account 240, "Capital stock", relating thereto, of nominally issued capital stock.

NOTE: The amount paid for capital stock actually issued or assumed by the company and reacquired by it and held uncanceled shall be included in account 280, "Treasury stock".

Account 280, "Reacquired capital stock", is amended by revising the title and text to read:

280 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier then reacquired, and is neither retired or cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged and unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with Instruction 24, paragraphs (d) through (f).

[FR Doc.74-30347 Filed 12-27-74;8:45 am]

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Legal Division Order No. 1]

LEGAL DIVISION

Organization and Functions

DECEMBER 19, 1974.

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 1009 and 26 U.S.C. 7801, by Department Circulars 519 of June 30, 1934, and 595 of September 13, 1938, and by Treasury Department Orders No. 120, No. 173-2, No. 175, No. 175-2, No. 190 (Revised), and No. 221, I hereby define and prescribe the organization and functions of the Legal Division of the Treasury Department.

1. The Legal Division consists of a consolidated legal staff headed by the General Counsel, who is by statute the chief law officer of the Department of the Treasury, and is composed of all attorneys providing legal service in all offices and bureaus of the Treasury Department. The legal staff provides legal advice to the Secretary of the Treasury and to the officers, offices and bureaus of the Department in accordance with the designations made by this Order. The General Counsel operates principally through a Deputy General Counsel, the Assistant General Counsels, the Chief Counsels, and the Legal Counsels listed herein, to whom delegations of specific authority are made by Legal Division Orders.

2. The General Counsel provides legal advice to the Secretary of the Treasury, the Deputy Secretary, the Under Secretaries, and the Assistant Secretaries on any legal matter which may arise within the Department. He supervises the Legal Division and establishes the policies, procedures, and standards governing its functioning.

3. The Deputy General Counsel is an Assistant General Counsel designated to serve as deputy and act as General Counsel in the absence of the General Counsel. The Deputy General Counsel reviews work prepared for the General Counsel and supervises the day-to-day operation of the Legal Division. He receives on behalf of the General Counsel reports from the Assistant General Counsels and Chief Counsels, excepting the Assistant General Counsel who is the Chief Counsel of the Internal Revenue Service, the Assistant General Counsel—Tax Legislative Counsel, and the Chief Counsel of the Office of the Comptroller of the Currency, who report directly to the General Counsel.

4. The Assistant General Counsel—Chief Counsel, Internal Revenue Service, is the legal adviser to the Commissioner of the Internal Revenue Service and supervises and directs the legal staff advising the Internal Revenue Service. He reports directly to the General Counsel.

5. The Assistant General Counsel—Tax Legislative Counsel is the legal adviser to the Assistant Secretary (Tax Policy) and provides advice concerning tax legislation, tax policy, and tax treaties. He reports directly to the General Counsel.

6. The Assistant General Counsel (International Affairs) provides legal advice to the Under Secretary (Monetary Affairs), the Assistant Secretary (International Affairs), the Assistant Secretary (Trade, Energy, and Financial Resources Policy Coordination), the Assistant Secretary (Economic Policy), and the Special Assistant to the Secretary (National Security). He reports to the General Counsel through the Deputy General Counsel.

7. The Assistant General Counsel (Administration, Legislation, and Fiscal Operations) provides legal advice to the Assistant Secretary (Administration), the Fiscal Assistant Secretary, the Assistant Secretary (Legislative Affairs), and to the Office of the Secretary generally with respect to administrative procedure and Department administration. He also serves as legal adviser to the Treasurer of the United States, the Special Assistants to the Secretary (Debt Management) and (Public Affairs), and to the U.S. Savings Bonds Division. He is in charge of the nontax legislative activities of the Department. He supervises the Chief Counsel, Bureau of the Public Debt, the Chief Counsel, Office of Revenue Sharing, and the legal functions of the Director, Office of the Director of Practice. He reports to the General Counsel through the Deputy General Counsel.

8. The Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) provides legal advice to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs). He acts for the General Counsel in the supervision of all nontax litigation matters and tax litigation matters which arise out of the activities of the Bureau of Alcohol, Tobacco and Firearms requiring General Counsel action. He supervises the Chief Counsel, U.S. Customs Service, the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms, the Chief Counsel of the Office of Foreign Assets Control,

the Legal Counsel, Bureau of the Mint, and the Legal Counsel, U.S. Secret Service. He reports to the General Counsel through the Deputy General Counsel.

9. The Senior Counselor to the General Counsel assists the General Counsel and the Deputy General Counsel by undertaking special assignments pertaining to any area of responsibility in the Office of the General Counsel. He supervises the Chief, Legal Opinion Section, and reports directly to the General Counsel.

10. The Chief, Legal Opinion Section, prepares formal General Counsel Opinions and, as requested by the General Counsel, Deputy General Counsel or Senior Counselor, provides research on questions concerning any aspect of the Department's activities, and serves as a coordinating repository for significant decisions made in the General Counsel's office. He reports to the Senior Counselor.

11. The Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, is the chief law officer for that Bureau and reports to the General Counsel through the Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) and the Deputy General Counsel.

12. The Chief Counsel, Office of the Comptroller of the Currency, is the chief law officer for that office and reports directly to the General Counsel.

13. The Chief Counsel, United States Customs Service, is the chief law officer for that Service and reports to the General Counsel through the Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) and the Deputy General Counsel.

14. The Chief Counsel, Foreign Assets Control, is the chief law officer for that office and reports to the General Counsel through the Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) and the Deputy General Counsel.

15. The Chief Counsel, Bureau of the Public Debt, is the chief law officer for that Bureau, and reports to the General Counsel through the Assistant General Counsel (Administration, Legislation, and Fiscal Operations) and the Deputy General Counsel.

16. The Chief Counsel, Office of Revenue Sharing, is the chief law officer for that Office, and reports to the General Counsel through the Assistant General Counsel (Administration, Legislation, and Fiscal Operations) and the Deputy General Counsel.

17. The Legal Counsel, Bureau of the Mint, provides legal advice to that Bureau and reports to the General Counsel

through the Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) and the Deputy General Counsel.

18. The Legal Counsel, United States Secret Service, provides legal advice to that Service and reports to the General Counsel through the Assistant General Counsel (Enforcement, Operations, and Tariff Affairs) and the Deputy General Counsel.

19. The Director of Practice (1) directs the legal functions performed in his office and reports with respect to those functions to the General Counsel through the Assistant General Counsel (Administration, Legislation, and Fiscal Operations) and the Deputy General Counsel; and (2) makes operating decisions in carrying out the responsibilities placed on him under 31 U.S.C. 1026 and by 31 CFR Part 10 under the administrative supervision of the General Counsel exercised by the General Counsel or the Deputy General Counsel.

A change in title of any official in the Office of the Secretary shall not affect the foregoing assignments unless the change includes a change of function. The General Counsel may, without formal Order, reassign on a temporary basis a function of an Assistant General Counsel or the Senior Counselor.

Effective: January 1, 1975.

[SEAL] RICHARD R. ALBRECHT,
General Counsel.

[FR Doc.74-30367 Filed 12-27-74;8:45 am]

[Supplement to Dept. Circular; Public Debt Series—No. 16-74]

SERIES K-1976 TREASURY NOTES

Rates of Percent Per Annum

The Secretary of the Treasury announced on December 23, 1974, that the interest rate on the notes described in Department Circular—Public Debt Series—No. 16-74, dated December 16, 1974, will be 7¼ percent per annum. Accordingly, the notes are hereby redesignated 7¼ percent Treasury Notes of Series K-1976. Interest on the notes will be payable at the rate of 7¼ percent per annum.

JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.74-30353 Filed 12-27-74;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON SPACE SHUTTLE UTILIZATION

Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Department of Defense Space Shuttle Utilization will meet in closed session on 15 and 16 January 1975, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of De-

fense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine how the Space Shuttle with its new capabilities can lead to more effective military space operations in the future.

In accordance with Public Law 92-463, section 10, Paragraph (d), it has been determined that Defense Science Board meetings concern matters listed in Section 552(b) of Title 5 of the United States code, particularly Subparagraph (1) thereof, and that the public interest requires such meetings to be closed insofar as the requirements of subsections (a)(1) and (a)(3) of section 10, Public Law 92-463 are concerned.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, OASD (Comptroller).

DECEMBER 24, 1974.

[FR Doc.74-30343 Filed 12-27-74;8:45 am]

DEPARTMENT OF JUSTICE

FEDERAL ADVISORY COMMITTEE ON FALSE IDENTIFICATION

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix I) that the third meeting of the Federal Advisory Committee on False Identification will be held at 10 a.m., Thursday, January 16, 1975, at the Department of Justice Briefing and Conference Center, Department of Justice, 10th and Constitution Avenues NW., Washington, D.C.

The Committee was established by the Attorney General to study the criminal use of false identification at Federal, state and local levels and to recommend measures to prevent the criminal use of false identification and the obtaining of fraudulent identification documents.

At the third meeting Committee Task Forces will continue to examine the false identification problem in the following areas: Government payments; commercial transactions; fugitives; Federal identification documents; and state and local identification documents. The meeting, open to the public, will adjourn at approximately 3:30 p.m.

Further information concerning this meeting may be obtained from David J. Muchow, General Crimes Section, Criminal Division, Department of Justice, Room 402 Federal Triangle Building, 315 9th Street NW., Washington, D.C., 20530, telephone, area code 202-739-2745. Minutes of the meeting will be available for public inspection two weeks after the meeting in Room 402, Federal Triangle Building.

HENRY E. PETERSEN,
Assistant Attorney General.

[FR Doc.74-30359 Filed 12-27-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

PUBLIC INSPECTION OF RECORDS

OCS Order No. 12, Pacific Area

Correction

In FR Doc. 74-27833 appearing at 39 FR 41560 in the issue of Friday, November 29, 1974, in the first column on page 41561 the third paragraph is corrected to read "This Order will be effective December 1, 1974."

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

ADVISORY COMMITTEE ON THE EDUCATION OF BILINGUAL CHILDREN

Notice of Public Meeting

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that a meeting of the Advisory Committee on the Education of Bilingual Children will be held from 8:30 A.M. to 5:00 P.M. on Wednesday, January 22, and on Thursday, January 23, 1975 from 8:30 A.M. to 5 P.M. The Committee will meet in a conference room at Vacation Village, Mission Bay, San Diego, California.

The meeting shall be opened to the public. The proposed agenda for the Committee meeting is:

1. Committee report on position paper and draft.
2. Committee input on rules and regulations.
3. New Business.

Records shall be kept of all proceedings, and shall be available for public inspection at Room 3600, Regional Office Building #3, 7th and D Streets SW., Washington, D.C. 20202

Signed at Washington, D.C., on December 18, 1974.

JOHN C. MOLINA,
Director, Division of
Bilingual Education.

[FR Doc.74-30292 Filed 12-27-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

(CGD 74 301)

EQUIPMENT, CONSTRUCTION, AND MATERIALS

Termination of Approval Notice

1. Certain laws and regulations (46 CFR Chapter I) require that various items of lifesaving, firefighting and miscellaneous equipment, construction and materials used on board vessels subject to Coast Guard inspection, on certain motorboats and recreational vessels, and on the artificial islands and fixed structures on the outer Continental Shelf be

of type approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been terminated as herein described. These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160, to 164.

3. FEDERAL REGISTER, Vol. 39 No. 50 dated March 13, 1974 contained changes to Title 45 CFR Subpart 160.051 concerning inflation standards for inflatable liferafts. The preamble to that document established effective dates of the changes as they apply to new construction and in-service rafts.

New approvals were required to meet the new standards on and after April 12, 1974; manufacturing under existing approvals was permitted to continue until January 1, 1975; and existing in-service rafts were to be permitted to be carried until January 1, 1980 except for rafts on Great Lakes Vessels which were to be permitted to be carried until January 1, 1975. That document further indicated that tests would be conducted to determine if existing in-service rafts complied with new standards and if not, raft retrofitting would be permitted and the rafts could remain in-service so long as they remain in good and serviceable condition.

The purpose of this document is to terminate approvals of all inflatable rafts now manufactured which do not comply with the new inflation standards and to state the conditions under which inflatable liferafts manufactured under these approvals may continue in-service.

The testing referenced in the document noted above has been completed and none of the existing rafts were found to comply with the new higher standard. It was determined that fitting a new larger inflation system would bring the existing rafts into compliance.

Since the publication of the new standard on March 3, 1974 supply problems, particularly a shortage of steel used in the manufacturing of gas supply cylinders, has caused the Coast Guard to reconsider the January 1, 1975, effective date for completion of the phaseover period of rafts installed on vessels operating in very cold regions for extended periods of time.

In-service rafts which are retro-fitted to meet the new requirements will show compliance with the new regulations by inclusion of the words "MOD TEMP", the inspector's initials and the date of retro-

fitting on the identification plate. A Navigation and Vessel Inspection Circular will be published for clarification and setting up of procedures to be followed by manufacturers, servicing facilities and Coast Guard Marine Inspectors for marking of identification plates.

4. In consideration of the above and notwithstanding the termination of approvals listed in this document, inflatable rafts affected may be used on vessels operating on the Great Lakes until January 1, 1976 and on all other vessels until January 1, 1980. Inflatable rafts affected by this document which are retro-fitted in accordance with procedures established by the manufacturer and approved by the Commandant and the Coast Guard and marked to show that they have been upgraded are not subject to the dates listed above and may be used as long as they remain in good and serviceable condition.

INFLATABLE LIFE RAFTS

The C. J. Hendry Company, 139 Townsend Street, San Francisco, California 94107, Approval Nos. 160.051/1/1, 160.051/2/3, 160.051/3/3, 160.051/4/3, 160.051/5/3, 160.051/6/3, 160.051/10/3 and 160.051/11/3 are terminated effective January 1, 1975, due to change in specifications.

The Switlik Parachute Company, Inc., 1325 East State Street, Trenton, New Jersey 08607, Approval Nos. 160.051/13/3, 160.051/14/2, 160.051/15/4, 160.051/16/4, 160.051/18/4, 160.051/19/4 and 160.051/20/4 are terminated effective January 1, 1975, due to change in specifications.

The Uniroyal, Inc., Plastic Products Division, Providence, Rhode Island 02901, Approval No. 160.051/28/3 is terminated effective January 1, 1975, due to change in specifications.

The R.F.D., Inc., Richwood, West Virginia 26685, Approval Nos. 160.051/22/0, 160.051/24/0, 160.051/25/0, 160.051/26/0, 160.051/27/0 and 160.051/33/0 are terminated effective January 1, 1975, due to change in specifications.

Dated: December 23, 1974.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Merchant Marine Safety.

[FR Doc.74-30335 Filed 12-27-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-440 and 50-441]

CLEVELAND ELECTRIC ILLUMINATING CO.

Availability of Partial Initial Decision and Supplemental Partial Initial Decision on Environmental Matters and Site Suitability

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulation in § 50.10(e)(2) and Appendix D, Section A.9 and A.11 of 10 CFR Part 50, notice is hereby given that a Partial Initial Decision on Environmental and Site Suitability dated September 18, 1974, and a Supplemental Partial Initial Decision on Site Suitability and Environmental Matters dated October 20, 1974, by the Atomic Safety and Licensing Board, in

the above captioned proceedings involving an application by the Cleveland Electric Illuminating Company for construction permits for the Perry Nuclear Power Plant, Units 1 and 2, to be located in Lake County, Ohio, are available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW, Washington, D.C., and in the Perry Public Library, 3753 Main Street, Perry Township, Ohio 44081.

The Partial Initial Decision and Supplemental Partial Initial Decision are also being made available at the Office of the Governor, State Clearinghouse, 62 East Broad Street—2nd Floor, Columbus, Ohio 43215.

Based on the record developed in the public hearings in the above captioned matter, the Partial Initial Decision and Supplemental Partial Initial Decision on Environmental Matters and Site Suitability of the Atomic Safety and Licensing Board supplement and modify the Final Environmental Statement prepared by the Commission's Directorate of Licensing relating to the construction of the Perry Nuclear Power Plant, Units 1 and 2. A copy of this Final Environmental Statement is also available for public inspection at the above designated locations.

Pursuant to the provisions of 10 CFR Part 50, Appendix D, section A.11, the Final Environmental Statement is deemed modified to include pertinent portions of the hearing record. As required by Section A.11 of Appendix D, copies of the Partial Initial Decision and the Supplemental Partial Initial Decision by the Atomic Safety and Licensing Board and the Final Environmental Statement have been transmitted to the Council on Environmental Quality and made available to the public as noted herein.

The Partial Initial Decision and the Supplemental Partial Initial Decision are subject to review by an Atomic Safety and Licensing Appeal Board prior to becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with the Partial Initial Decision and Supplemental Partial Initial Decision may be reviewed by the Commission.

Single copies of the Partial Initial Decision on Environmental and Site Suitability and the Supplemental Partial Initial Decision on Site Suitability and Environmental Matters, both by the Atomic Safety and Licensing Board, and the Final Environmental Statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Rockville, Maryland this 23rd of December, 1974.

For the Atomic Energy Commission.

WM. H. REGAN, JR.,
Chief, Environmental Projects
Branch 4, Directorate of
Licensing.

[FR Doc.74-30322 Filed 12-27-74;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Atomic Energy Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the AEC Regulatory staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.24, "Guidance on the License Application, Siting, Design, and Plant Protection for an Independent Spent Fuel Storage Installation," (1) identifies the parts of Title 10 of the Code of Federal Regulations applicable to an independent spent fuel storage installation (ISFSI); (2) describes the content of a license application; (3) presents siting considerations; (4) endorses a draft ANSI standard N305, "Design Objectives for Highly Radioactive Solid Material Handling and Storage Facilities in a Reprocessing Plant," and provides additional design recommendations for an ISFSI; and (5) describes plant protection guidelines.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed (listed below) or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 3.24 will, however, be particularly useful in evaluating the need for an early revision if received by March 3, 1975.

Comments should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 3 Regulatory Guides currently being developed include the following:

Control of Stainless Steel Welding for Safety-Related Components of Fuel Reprocessing Plants.

Corrosion Testing and Evaluation of Metals for Application in Fuel Reprocessing Plants. Standard Format and Content of Safety Analysis Reports for Enrichment Facilities.

Nondestructive Examination of Tubular Products for Use in Fuel Reprocessing and Fuel Fabrication Plants.

Control of the Use of Sensitized Stainless Steel for Components of Fuel Reprocessing Plants.

Control of Reheat Temperature for the Welding of Low-Alloy Steel for Use in Fuel Cycle Facilities.

Welder Qualifications for Welding in Areas of Limited Accessibility of Fuel Reprocessing and of Plutonium Processing and Fuel Fabrication Plants.

Nondestructive Examination of Liner Welds in Structures and Components of Fuel Reprocessing Plants.

General Design Guide for Process Building Ventilation Systems for Fuel Reprocessing Plants.

General Fire Protection Guide for Fuel Reprocessing Plants.

Standard Format and Content of License Applications for Fuel Reprocessing Plants.

Standard Format and Content of License Applications for Plutonium Fuel Fabrication and Recovery Plants.

Standard Format and Content of License Applications for Commercial Waste Burial Facilities.

Standard Format and Content of License Applications for UO₂ Fuel Fabrication Plants.

Quality Assurance for the Design, Construction, and Operation of Fuel Reprocessing Facilities.

Guide for Design, Construction, and Operation of Ventilation Systems for Plutonium Fuel Manufacturing Plants.

Criteria for Siting, Design, and Operation of Plants for the Manufacture of Mixed Oxide (U-Pu) Fuels.

Protective Coatings (Paints) for the Nuclear Industry.

Guide to the Preparation of Emergency Plans for Uranium and Plutonium Processing and Fuel Fabrication Plants.

Design Criteria for Spent Fuel Storage Facilities at HTGR Sites.

Guide for Design of Irradiated Fuel Receiving and Storage Facilities.

Assumptions Used for Evaluating the Consequences of a Criticality Accident in an LWR Fuel Fabrication Plant.

Selection, Training, and Qualification of Personnel for Fuel Reprocessing Plants.

Temporary Storage of High-Level Liquid Waste at Fuel Reprocessing Plants.

Assumptions Acceptable for Evaluating the Consequences of Accidental Nuclear Criticality in a Fuel Reprocessing Plant.

Assumptions Acceptable for Evaluating the Consequences of Accidental Nuclear Criticality in a Plutonium Processing or Fuel Fabrication Plant.

Confinement Structures and Systems for Plutonium Processing and Fuel Fabrication Facilities.

Emergency Water Systems for Fuel Reprocessing Plants and Plutonium Processing and Fuel Fabrication Plants.

Protection Systems for Fuel Reprocessing Plants and for Plutonium Processing and Fuel Fabrication Plants.

Design Basis Floods for Fuel Reprocessing Plants.

Criteria for Gaseous Radioactive Effluent Systems at Fuel Reprocessing Plants.

Design Criteria for Decommissioning of Nuclear Fuel Reprocessing Plants.

Definition of Radioactive Waste Categories. Codes Applicable to Quality Control and Fabrication of Metallic Structures, Systems, and Components for Fuel Reprocessing Plants.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 19th day of December 1974.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.74-30326 Filed 12-27-74; 8:45 am]

[DOCKET NO. 50-206]

SOUTHERN CALIFORNIA EDISON CO.

Issuance of Amendment To Provisional Operating License

Notice is hereby given that the U.S. Atomic Energy Commission (the Commission) has issued Amendment No. 7 to Provisional Operating License No. DPR-13 issued to Southern California Edison Company which revised Technical Specifications for operations of the San Onofre Nuclear Generating Station, Unit 1, located in San Diego, California. The amendment is effective as of its date of issuance.

This amendment incorporates limiting conditions for operation and surveillance requirements for the new axial offset monitoring system which replace the previously existing hold band requirement for control group movement.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

For further details with respect to this action, see (1) the application for amendment dated July 12, 1974, (2) Amendment No. 7 to License No. DPR-13, with any attachments, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the San Clemente Public Library, 233 Granada Street, San Clemente, California.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 20th day of December 1974.

For the Atomic Energy Commission.

ROBERT A. PURPLE, Chief,
Operating Reactors Branch, No. 1,
Directorate of Licensing.

[FR Doc.74-30323 Filed 12-27-74; 8:45 am]

[Docket No. 50-255]

CONSUMERS POWER CO.

Corrected Notice of Receipt of Application of Facility Operating License and Availability of Licensee's Environmental Report

This is a correction to the Notice of Receipt of Application of Facility Operating License and Availability of Licensee's Environmental Report: Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License: Notice of Opportunity for Hearing, originally published in the FEDERAL REGISTER on December 18, 1974. The notice, as originally published,

inadvertently omitted a portion of the description of the required content of petitions for leave to intervene. Accordingly, the date by which timely petitions for leave to intervene must be filed is extended beyond the original date of January 17, 1975, to January 29, 1975, as indicated in this corrected notice.

Notice is hereby given that the Atomic Energy Commission (the Commission) has received an application for a full-term facility operating license from the Consumers Power Company (the licensee) to possess, use, and operate the Palisades Plant (the facility), located in Covert Township on the licensee's site in Van Buren County, Michigan, at an increased power level of up to 2638 megawatts thermal. The currently authorized full-power level is up to 2200 megawatts thermal.

The licensee has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, a special environmental report which discusses environmental considerations related to the proposed operation of the facility.

The Commission will consider the licensee's special environmental report in accordance with the provisions of 10 CFR Part 51.

The Commission will consider the issuance of a full-term facility operating license to the Consumers Power Company which would authorize the licensee to possess, use, and operate the Palisades Plant in accordance with the provisions of the license and the technical specifications appended thereto upon: (1) the completion of a favorable safety evaluation on the application by the Commission's Directorate of Licensing; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the licensee's application by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for a full-term facility operating license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I. Construction of the facility was authorized by Construction Permit No. CPR-25, issued by the Commission on March 13, 1967. The facility is presently being operated in accordance with Provisional Operating License No. DPR-20, as amended.

The full-term facility operating license will not be issued until the Commission has made the findings, reflecting its review of the application under the Act, which will be set forth in the proposed license and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. The licensee has satisfied its obligation concerning indemnification as required by section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

On or before January 29, 1975, the

licensee may file a request for a hearing with respect to issuance of the full-term facility operating license and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed within the time prescribed in this notice, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

A petition for leave to intervene must be filed under oath or affirmation in accordance with the provisions of 10 CFR § 2.714. As required in 10 CFR § 2.714, a petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner, including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Docketing and Service Section or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by January 29, 1975.

A copy of the petition and/or request should also be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545 and to Judd L. Bacon, Senior Attorney, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201 and R. Rex Renfrow, III, Esquire, Isham, Lincoln & Beale, One First National Plaza, Chicago, Illinois 60670, attorneys for the licensee.

A petition for leave to intervene which is not timely will not be granted unless

the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition determines that the petitioner has made a substantial showing of good cause for failure to file on time and after considering those factors specified in 10 CFR § 2.714(a)(1)-(4) and § 7.14(d).

For further details with respect to the matters under consideration, see the licensee's application dated January 22, 1974, which also contains the licensee's special environmental report (section 7), which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan. The Commission's Final Environmental Statement issued June 1972 is available for public inspection at the above locations, and as they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Directorate of Licensing; (2) the Commission's consideration of the licensee's special environmental report pursuant to 10 CFR Part 51; and (3) the report of the Advisory Committee on Reactor Safeguards on the application for a full-term facility operating license.

Copies of the Commission's Final Environmental Statement issued June 1972 and copies of items (1) through (3), when available, may be obtained upon request addressed to the United States Atomic Energy Commission, Washington, D.C. 20545. Attention: Deputy Director for Reactor Projects, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this December 23, 1974.

For the Atomic Energy Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch,
#1, Directorate of Licensing.

[FR Doc.74-30168 Filed 12-27-74; 8:45 am]

[Docket Nos. 50-514, 50-515]

PORTLAND GENERAL ELECTRIC CO.

Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report: Time for Submission of Views on Anti-trust Matters

Portland General Electric Company (the applicant), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, which was docketed August 6, 1974 for authorization to construct and operate two generating units utilizing two pressurized water reactors. The Environmental Report and Site Suitability Report were tendered on June 7, 1974. Following a preliminary review for completeness, the Environmental Report and Site Suitability Report were, on August 6, 1974, found to be acceptable for docketing. The applicant submitted the PSAR August 6, 1974 and it was found to be acceptable on October 18, 1974. Docket Nos. 50-514 and 50-515 have been assigned to the ap-

plication and should be referenced in any correspondence relating to the application.

The proposed nuclear facilities, designated by the applicant as the Pebble Springs Nuclear Plant, Units 1 and 2 are located in Gilliam County, Oregon. Each unit is designed for initial operation at 3600 megawatts (thermal), with a net electrical output of 1260 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before February 7, 1975. The request should be filed in connection with Docket Nos. 50-514-A and 50-515-A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and at the Arlington Public School, District 3, P.O. Box 10, Arlington, Oregon 97812.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an environmental report dated June 7, 1974. The report, which discusses environmental considerations related to the construction and operation of the proposed facility is being made available for public inspection at the aforementioned locations and at the Federal Aid Coordination Section, Local Government Relations Division, Executive Department, 361 Public Service Building, Salem, Oregon 97310 and the East Central Oregon Association of Counties, Umatilla County Court House, Pendleton, Oregon 97801.

After the environmental report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission's Regulatory staff. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the *FEDERAL REGISTER*, a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the Regulatory staff will prepare a final environmental statement, the availability of which will be published in the *FEDERAL REGISTER*.

Dated at Bethesda, Md., this 22d day of November 1974.

For the Atomic Energy Commission.

A. SCHWENCER,
Chief, Light Water Reactors,
Branch 2-3, Directorate of
Licensing.

[FR Doc.74-28371 Filed 12-6-74;8:45 am]

[Docket Nos. 50-346A, 50-440A, 50-441A]

TOLEDO EDISON CO. ET AL.

Notice of Oral Argument

In the Matter of The Toledo Edison Company and The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit 1) The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2).

By motion dated December 20, 1974, the AEC Regulatory Staff requested oral argument on its December 5, "Motion for an Order Compelling Production and Delivery of Documents Requested of Applicants". The request was made following an informal meeting among the parties¹ and the Board Chairman on December 17, 1974, and a subsequent telephone conference call among the parties and the Chairman on December 20, 1974.²

The Department of Justice joined in the motion for oral argument.

The matter at issue is whether delivery of the discovery documents produced by the Applicant should be made available in Washington, D.C. rather than the home office of each Applicant. The City of Cleveland has similarly filed a motion seeking to have all Applicants' documents produced through discovery placed in a central depository in Washington, D.C.

At the telephone conference call of December 20, it was agreed that oral argument would be held on January 3, 1975. Briefs or legal memorandums may be filed by any party on or before January 2, 1975. Supplementary briefs or memorandums may be filed on or before January 7, 1975. Oral argument will commence at 9:30 a.m. January 3, at the Postal Rate Commission, 2000 L Street NW., Washington, D.C., Suite 500.

Pending decision by the Board on this matter, depositions by all parties will be held in abeyance. Likewise, the motions to quash subpoenas issued at Applicants' request will be held in abeyance. In addition all "motions to compel" will likewise be held in abeyance, except that as agreed between Applicant and Department of Justice at the December 17th informal meeting with the Chairman, DOJ

¹ All parties attended except AMP-O and State of Ohio.

² All parties participating except AMP-O and State of Ohio.

may submit additional interrogatories and document requests as refined from their initial requests.

It is so ordered.

Issued at Bethesda, Maryland, December 23, 1974.

THE ATOMIC SAFETY AND
LICENSING BOARD,
JOHN B. FARMAKIDES,
Chairman.

[FR Doc.74-30324 Filed 12-27-74;8:45 am]

[Docket Nos. 50-338-OL, 50-339-OL]

VIRGINIA ELECTRIC AND POWER CO.

Reconstitution of Board

In the Matter of Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2).

John B. Farmakides, Esq., was Chairman of the Atomic Safety and Licensing Board established to consider the above applications. Because of a schedule conflict, Mr. Farmakides is unable to continue in his duties as Chairman of this Board.

Accordingly, Frederic J. Coufal, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Rules of Practice, as amended.

Dated at Bethesda, Maryland, December 23, 1974.

The Atomic Safety and Licensing Board Panel.

NATHANIEL H. GOODRICH,
Chairman.

[FR Doc.74-30325 Filed 12-27-74;8:45 am]

[Docket No. 27067; Order 74-12-89]

CIVIL AERONAUTICS BOARD

ALLEGHENY AIRLINES, INC., ET AL.

Order Authorizing Discussions Regarding Pricing Policies and Practices of Fuel Suppliers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of December, 1974.

On October 2, 1974, various U.S. air carriers¹ filed in Docket 27067, an application for permission authorizing them and all other U.S. certificated air carriers to conduct multicarrier discussions concerning the pricing policies and related practices of fuel suppliers for a

¹ The joint applicants are Allegheny Airlines, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Piedmont Airlines, Trans World Airlines, Inc., Western Air Lines, Inc., and World Airlines, Inc.

period of 120 days from the date of the Board's authorization.

Answers in support of the application and requests for joining in the discussions have been filed by The Flying Tiger Line Inc. (FTL), Johnson Flying Service, Inc. (JFS) and various foreign air carriers.² Also by letter of October 16, 1974, Air New England requests that it be permitted to join in any discussions.³ No others answers or comments have been received.⁴

In support of their request the applicants state that they, like other certificated carriers, are seriously concerned about the long-term impact of fuel prices on their cost of doing business; that the recent fuel shortage seems to have triggered fundamental and possibly permanent changes in the relationships between airlines and their fuel suppliers; that some suppliers have sought to change existing airline fuel contracts unilaterally or to negotiate changes which unbalance those contracts heavily in their favor; and that indications appear that in negotiating new contracts, airlines are finding fuel suppliers insisting not only on substantially higher prices but also on terms and conditions which are onerous if not totally unreasonable.

The applicants further state their belief that these developments require a reexamination of the traditional means of doing business between airlines and their fuel suppliers, since the strength of individual airlines in fuel negotiations may not in the future be adequate to produce reasonable contracts with reasonable prices and reasonable terms, and individual airlines may find themselves forced to accept contract terms which fuel suppliers could not in conscience demand publicly from the entire industry. Applicants also believe that this situation is serious enough to require that carriers be permitted to explore possible methods of collective action aimed at better preserving a reasonable balance of rights in future fuel contracts, as for example, retaining a joint staff of experts to assist carriers in purchasing fuel, or themselves entering into joint bargaining. Applicants also state that it would be advantageous for all certificated air carriers to enter into discussions to meet the situation, since with every passing month new contracts are being negotiated involving unprecedented terms and conditions, and since the longer this process goes on, the more

difficult it will be to restore balance in the bargaining process.

FTL, a certificated all-cargo air carrier, states that the discussions will permit air carriers to engage in a unified effort comparable to that enjoyed by most of their fuel suppliers which have engaged for many years in joint ventures, consortia, etc., providing a potent and substantial means of exchanging information as to the availability of supply, price, etc. JFS, a supplemental air carrier, states that the discussions could be of some benefit in terms of achieving a less unreasonable balance in the fuel supply bargaining process, particularly for the smaller carriers in the industry. The foreign air carriers allege that they deal with the same fuel suppliers as some of the joint applicants and have encountered the same problems in fuel negotiations with their suppliers, and assert their right to join in the discussions pursuant to their respective bilateral air transport agreements with the U.S., or on the basis of comity and reciprocity.

Upon consideration, the Board has decided to grant applicants' request to hold multicarrier discussions concerning pricing policies and related practices of fuel suppliers, subject to various modifications and conditions. The recent precipitous increases in the price of fuel, as well as the shortfall in fuel supplies, have undoubtedly presented serious problems to the carriers, and have also had an impact on the traveling public both through fuel-related fare increases and through fuel-related schedule cutbacks.⁵ The Board has also noted the potential threat of further disruption of fuel supplies resulting from increased instability in the fuel-producing areas of the world.⁶ Further, the Board notes the recent controversy among the major petroleum exporting countries of the world regarding new fuel pricing policies, and its potential impact upon the pricing policies of the world's major fuel suppliers in their sales to customers in the aviation industry.⁷ Based upon the application and answers filed with the Board, it appears that the fuel problem created by the concerted action of the fuel exporting countries is compounded by the pricing policies of major fuel suppliers, which are relatively few in number and, according to FTL, are engaged in some forms of unified action with respect to their fuel pricing policies.

While the Board is not prepared to reach any determination at this time as to whether any agreements arising from the multicarrier discussions and directed toward the resolution of the fuel-pricing problem would be consistent

with the public interest, we note that the application is unopposed, and that the allegations therein and the answers thereto are uncontroverted. In our view, the carriers should be given the opportunity to conduct discussions concerning pricing policies of the fuel suppliers and related matters in order to determine for themselves, and to present to the Board, their position as to whether a genuine contribution in this respect can be rendered by any appropriate collective action. We will expect that any agreement submitted to the Board as a result of the discussions will be fully justified, in terms of the necessity therefor, by detailed evidentiary material.

The applicants request that the participants in the discussions include all U.S.-certificated air carriers. However, the answers filed by various foreign air carriers request that the authorization to participate in the discussions be extended to foreign air carriers. We have decided to include foreign air carriers among the participants in the discussions, since they are confronted essentially with the same problem.⁸

The approval herein will be granted, subject to the customary conditions we have recently imposed in discussion authorizations,⁹ except that we will require that all meetings be held in Washington, D.C.

Accordingly, it is ordered, that:

1. The application herein for authorization of multicarrier discussions concerning the pricing policies and related practices of fuel suppliers be and it hereby is granted, subject to the following conditions:

(a) All U.S. certificated air carriers and foreign air carriers shall be given an opportunity to participate in all discussions and activities held pursuant to this order, to include such items as the planning of any discussion guidelines, the establishment of objectives for the study, the conduct of technical team work, or the decisions on study proposals;

(b) The discussion meetings and other study activities authorized by this order shall take place in Washington, D.C., at dates and times determined by the participants;

(c) Representatives of the Board, the Departments of Justice, State and Transportation, and the Federal Energy Administration shall be permitted to attend each of these discussion meetings as observers;

(d) Notices, agenda, ground rules for the oral presentation by interested persons of their views, suggestions, and requests to the discussants, as well as an address to which written comments for consideration by the discussants can be sent, pertaining to each noncontinuous meeting¹⁰ authorized herein shall be sent

² Aeromexico de Mexico a/k/a Aeromexico, (Aeromexico), and British Airways have each filed separate answers. A joint answer has been filed on behalf of Cayman Airways, Ltd. (Cayman), Lineas Aereas Costarricenses, S.A. (LACSA), Compania Mexicana de Aviacion, S.A. (CMA), and Venezolana Internacional de Aviacion, S.A. (VIASA).

³ By Order 74-10-69, October 11, 1974, the Board postponed the effective date of Air New England's certificate, as requested by the air carrier, until January 1, 1975.

⁴ A list of fuel suppliers, who have been served with a copy of the application is attached as an appendix hereto, and is filed as part of the original document.

⁵ On this basis the Board has authorized inter-carrier discussions among U.S. flag carriers and foreign air carriers looking toward agreements on capacity limitations and related matters as necessary to meet continuing critical fuel problems. Orders 74-7-33, July 8, 1974; 74-11-132, November 25, 1974.

⁶ See Order 74-11-35, November 7, 1974, authorizing inter-carrier discussions concerning extensions of fuel-related capacity limitation agreements.

⁷ Washington Post, December 14, 1974.

⁸ In addition, we shall authorize the inclusion of Air New England as a participating party to the discussions. (See footnote 3 above.)

⁹ Order 74-11-37, November 8, 1974.

¹⁰ By noncontinuous meeting, we mean a meeting beginning 5 or more business days after conclusion of the previous meeting.

to (1) all carriers participating in these discussions, (2) the Board's Docket Section, (3) all persons who filed documents in this docket, and (4) all other persons who so request; such items are to be filed with the Board and sent to the other persons enumerated not later than 5 business days before each meeting; further, the airlines shall provide for the consideration of oral and written presentations by interested persons (i) before the start of, or during each noncontinuous meeting authorized herein,¹¹ and (ii) after an oral presentation by discussants of the tentative conclusions reached in their executive sessions, if any;

(e) Complete and detailed minutes of these discussions¹² shall be maintained by the participants, including a summary of each item discussed and the opinions expressed by the discussants on each point (but without identification of the airline or airline representative making each point); such minutes shall be filed with the Board's docket section, and sent to all other persons who so request,¹³ within 5 business days after the date of each meeting;

(f) Any agreement or agreements reached as a result of the discussions authorized herein shall be filed with the Board, pursuant to the requirements of section 412(a) of the Act (49 U.S.C. 1382) and Part 261 of the Board's Economic Regulations (14 CFR Part 261) and Subpart P of the Board's Rules of Practice (14 CFR 302.1608) and shall not become effective unless and until approved by the Board pursuant to section 412(b) of the Act; the airlines filing the agreement shall accompany their application with a detailed justification for each aspect of it, including the reasons for the denial of material requests or suggestions made at the oral presentation or in writing by interested persons to the airlines;¹⁴

(g) The authorization granted herein shall expire 120 days from the date of this order;

(h) The authorization granted herein may be extended, modified, clarified, or revoked at any time by the Board or by the Director of its Bureau of Operating Rights (action by the Director of the Bureau of Operating Rights to be subject to the procedures for review of staff ac-

tion contained in Subpart C of 14 CFR Part 384); and

2. Except to the extent granted herein, all other outstanding requests in this docket be and they hereby are denied.

This order shall be served on all U.S. certificated air carriers, including supplemental air carriers; on all other persons who responded to the application herein; on all persons upon whom the application has been served; on the United States Departments of Justice, State and Transportation; and on the Federal Energy Administration.

This order shall also be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc. 74-30366 Filed 12-27-74; 8:45 am]

[Docket No. 27289; Order 74-12-86]

DATA AIR DISTRIBUTION SYSTEM CO., INC.

Order of Suspension and Investigation Regarding Certain Shipments and Re- duced Time Limit for Reporting Claims

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of December, 1974.

By tariff revisions¹ bearing the issue date of November 27 and marked to become effective December 27, 1974, Data Air Distribution System Co., Inc. (Data Air), an air freight forwarder, proposes (1) that a shipment with a declared value in excess of \$0.50 per pound or \$50.00 (whichever is higher) would not be acceptable for transportation; and (2) that claims involving loss or damage discovered after delivery of the shipment be reported in writing to Data Air within 10 days after delivery.

In support of its proposals, the forwarder asserts, *inter alia*, that it is placed in a position beyond the normal bounds of common carrier liability because it handles only shipments of computers and electronic machines of very high declared values; that the revised declared value rule does not change the maximum limit of its liability—the carrier would continue to accept shipments up to \$25,000 in value, based on \$0.50 per pound without advance notice, and over \$25,000 with advance notice; and that the 10-day claim time limit is necessary in order to comply with timely reporting of loss in writing to direct carriers within their required 15-day period.

Upon consideration of all relevant matters, the Board finds that the proposed rules may be unjust, unreasonable, unduly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the proposals should be suspended pending investigation.

By proposing to limit the acceptance of shipments to those having a declared

¹ Revisions to Data Trans Air Co., Inc. series, Tariff C.A.B. No. 1.

value not exceeding \$0.50 per pound, the forwarder would place limitations on its liability without offering the shipper a choice of higher liability at additional rates. This would be contrary to the common law concept of common carrier responsibility, as pointed out by the Board in previous orders. For example, in Order 72-8-55, the Board suspended a proposal limiting liability by CF Air Freight, Inc., another forwarder, stating, *inter alia* "This is contrary to the common law concept that the validity of a limitation on liability (or a released rate) is dependent upon the shipper having an option for greater liability at greater rates." (See also Orders 70-1-34, 71-2-36, and 74-4-156.)

Although the forwarder will still continue to accept shipments valued below \$25,000 based on \$0.50 per pound without advance notice and shipments exceeding \$25,000 with advance notice, shippers would not be permitted, under the proposal, to declare a value based on an amount in excess of \$0.50 per pound.

The proposed provision requiring that concealed loss or damage reporting be submitted in writing within 10 days appears to be unnecessarily stringent, placing an undue burden upon shippers. The 10-day claim time limit is significantly lower than that in effect for other forwarders, based upon a sample survey by our staff, and represents a significant lowering of the claim time limit.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof.

It is ordered, That: 1. An investigation is instituted to determine whether the provisions proposed in Rule No. 10 on 4th Revised Page 5, Rule No. 60(A) on 7th Revised Page 9, Rule No. 65 and Rule No. 70 on 7th Revised Page 9-A of Data Air Distribution System Co., Inc.'s C.A.B. No. 1 (Data Trans Air Co., Inc. series), and rules, regulations, or practices affecting such provisions are or will be unjust, unreasonable, unduly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, and practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions proposed in Rule No. 10 on 4th Revised Page 5, Rule No. 60(A) on 7th Revised Page 9, Rule No. 65 and Rule No. 70 on 7th Revised Page 9-A of Data Air Distribution System Co., Inc.'s C.A.B. No. 1 (Data Trans Air Co., Inc. series), are suspended and their use deferred to and including March 26, 1975, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein, designated Docket 27289, be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariffs and served upon Data

¹¹ The discussants may, if necessary, limit the time available to those requesting an opportunity to make oral presentations, if that is done on a fair and equitable basis.

¹² While technical working subcommittee discussions are relieved from this condition, it is expected that in the conduct of the study, this work of the subcommittee will be periodically reported to a parent group for review and approval. The requirements involving the maintenance of minutes and presentations by interested parties will also be in effect at such meetings.

¹³ The discussants are not precluded from setting a nominal charge to be paid for those requesting copies of the minutes; such charge should not exceed the cost of duplicating and sending such copies.

¹⁴ Formal requests or suggestions of a similar nature can be grouped together and answered collectively.

Air Distribution System Co., Inc., which is hereby made a party to Docket 27289.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-30365 Filed 12-27-74;8:45 am]

[Docket No. 26479]

DELTA AIR LINES AND TRANS WORLD AIRLINES

Oral Argument Regarding Route Transfer Agreement

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on January 22, 1975, at 10 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., December 20, 1974.

[SEAL] ROBERT L. PARK,
Chief Administrative Law Judge.

[FR Doc.74-30362 Filed 12-27-74;8:45 am]

[Docket No. 26951]

TRANS INTERNATIONAL AIRLINES, INC., ET AL.

Hearing Regarding Acquisition Agreement

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on January 21, 1975, at 10 a.m. (local time) in Room 726, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned Administrative Law Judge.

For details of the issues involved in this proceeding, interested persons are referred to the Prehearing Conference Report, served on November 5, 1974, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 23, 1974.

[SEAL] WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc.74-30363 Filed 12-27-74;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Availability

Environmental impact statements received by the Council on Environmental Quality from December 16 through December 20, 1974. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days from this FEDERAL REGISTER notice of avail-

ability. (February 10, 1975) The thirty (30) day period for each final statement begins on the date that the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available, at cost, from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E Administration Building, Washington, D.C. 20250, (202) 447-3965.

FOREST SERVICE

Draft

Grand Mesa—Uncompahgre Timber Management Plan, Colorado, December 16: The statement refers to the revision of the 1961 Timber Management Plan for the Grand Mesa—Uncompahgre N.F. in west central Colorado. The proposed application of silvicultural management on 45,000 acres of forest land will result in the harvest of 311,000 Cunits of wood, including 152 million board feet of sawtimber. Adverse impacts reduction of wilderness character on inventoried roadless areas, and changes in the way the landscape looks. (ELR Order No. 41883.)

Land Exchange, Cibola, Carson N.F. New Mexico, December 16: The statement refers to a proposal by the Sandia Peak Tram Company to exchange land with the Cibola and Carson National Forests. The Tram Company has offered land in Embudo Canyon in the Sandia Mountains, Cibola N.F., and land on the Rio Antonio Creek, northwest of Tres Piedras, Carson N.F. The tract in the Sandia Mountains is about 5 miles northwest of Albuquerque and borders on three other tracts which the company is presently developing. There are 159.89 acres in the tract of National Forest land. Adverse impacts are elimination of recreational activities on land given up, and economic gains from summer homes development that would be lost. (ELR Order No. 41886.)

Rolling Prairie Planning Unit, Custer N.F., North Dakota, December 16: The action is the implementation of a Multiple Use Plan for the Rolling Prairie Planning Unit, Little Missouri River National Grasslands, Custer National Forest. The Planning Unit is located in McKenzie, Golden Valley, Billings, and Slope Counties and contains 882,680 acres of land. The plan provides for oil and gas extraction, beef production, and the protection of historical, archeological, and paleontological sites. Adverse impacts range from low to moderate for most of the 18 activities considered. (ELR Order No. 41891.)

Final

Horseshoe Meadows, Inyo National Forest, Inyo County, California, December 16: The statement refers to a land use plan which would involve the construction of year round recreational facilities near Horseshoe Meadows, within the Cottonwood Basin of the Inyo National Forest. The plan calls for a 100 unit overnight campground, a program interpreting the Golden Trout and its High Sierra environs, trail facilities for the Pacific Crest Trail, a pack station, and limited development for cross-country skiing. Adverse environmental impacts will include the removal of some vegetation and the disturbance of soil during construction activities. Comments made by: USDA, COE, EPA, FPC, HEW, DOI, DOT, state and local agencies, and concerned citizens (ELR Order No. 41877.)

Juniper Unit, Ocala National Forest, Marion and Lake Counties, Florida, December 19: The statement refers to the proposed management of the 20,000 acre Juniper-Hughes and Pat Islands Units Ocala National Forest. Management activities will be directed towards such functions as timber production, recreational uses, wildlife and endangered species protection, and quality control (soil, water, and solid waste). There will be road construction, and adverse impact from timber harvest activities and prescribed burning (192 pages). Comments made by: DOI, EPA, COE, USDA, FPC, AHP, state and local agencies, and concerned citizens. (ELR Order No. 41906.)

Whitewater and Cullasaja River Units, Nantahala N., Transylvania, Jackson, Macon Counties, North Carolina, December 16: Proposed is a ten year management plan for the Cullasaja and Whitewater River Units of the Nantahala National Forest. The two units total 30,000 acres of National Forest lands. Management will be for timber, wildlife habitat, recreation, and water quality values. There will be adverse impact to scenic values, soils, and streams from timber harvesting and road construction (174 pages). Comments made by: DOT, EPA, TVA, COE, HUD, AHP, State and local agencies, and concerned citizens. (ELR Order No. 41885.)

Pisgah National Forest, North Carolina, December 16: The statement refers to a proposed 10 year management plan for the North and West Fork French Broad Unit and the Davidson River Unit of the Pisgah National Forest. The 61,363 acres of National Forest land will be managed for wildlife, timber harvest, and recreational values. There will be impact upon scenic values, soils and water quality, and wildlife habitat. (228 pages) Comments made by: DOC, DOI, EPA, HUD, TVA, COE, State agencies. (ELR Order No. 41892.)

SOIL CONSERVATION SERVICE

Draft

Sand Creek Watershed, Harvey and Marion Counties, Kansas, December 16: The statement refers to a project for watershed protection, flood prevention, and recreation in Harvey and Marion Counties. Floodwater and sedimentation damages will be reduced on 4,619 acres of flood plain land. There will be 1,195 acres for recreation and wildlife management area, including a 195-acre reservoir for water-based recreation and warm-water fishing. Adverse impacts include the use of land for project purposes, displacement of people, and traffic, litter, and noise will increase around the recreation area of the multiple-purpose reservoir (163 pages). (ELR Order No. 41868.)

East Franklin Watershed, Franklin, Catahoula, Richland Counties, Louisiana, December 16: The statement refers to the construction of the East Franklin Watershed Project. The project is for watershed protection, flood prevention, and drainage in Franklin, Catahoula, and Richland Parishes, Louisiana. Approximately 186 miles of channel work with appurtenant measures, construction of 28 structures for water control, and measures to minimize adverse effects to fish and wildlife will be installed. Adverse impacts are loss of wildlife habitat, sedimentation and turbidity during construction, and increased temperatures in ponded areas. (ELR Order No. 41882.)

Final

Leona River Watershed Project, Uvalde County, Texas, December 20: Proposed is a watershed protection and flood protection project on the 39-180 acre Leona River Watershed Project. Project measures will include the use of land treatment and channel

work on 3.47 miles of stream, and the construction of 4 single purpose floodwater retarding structures. Nineteen hundred and thirty acres, some of it wildlife habitat, will be committed to the project. (37 pages) Comments made by: COE, HEW, DOI, EPA, State agencies. (ELR Order No. 41908.)

Draft

Rock Creek Watershed, Oregon, December 16.

ATOMIC ENERGY COMMISSION

Contact: For Non-Regulatory Matters: Mr. W. Herbert Pennington, Office of Assistant General Manager, E-201, AEC, Washington, D.C. 20545, (301) 973-4241. For Regulatory Matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, P-722, AEC, Washington, D.C. 20545, (301) 973-7373.

Final

Joseph M. Farley Nuclear Plant, Houston County, Alabama, December 16: Proposed is the issuance of operating licenses to the Alabama Power Co. for the two unit Joseph M. Farley Plant. Each unit employs pressurized water reactors to produce up to 2774 Mwt, which will be used to provide 844 MWe (net). Cooling will be with a closed-loop cooling tower system, with water drawn from and discharged to the Chattahoochee River, at a consumptive loss of 25,400 gpm. Comments made by: AHP, USDA, COE, DOC, HEW, DOI, DOT, EPA, agencies of Alabama, Florida, and Georgia. (ELR Order No. 41871.)

Shirley Basin Uranium Mill, Carbon County, Wyoming, December 20: Proposed is the construction of Source Material License SUA-442, issued to Utah International Co., for the operation of a uranium mill in the Shirley Basin area. The mill is designed as an acid-leach, resin ion-exchange uranium ore processing plant with a design capacity of 1500-1800 tons/day. Although the licensing action does not extend to mining, the environmental impact of that activity is included in the statement. (65 pages) Comments made by: USDA, AHP, COE, HEW, FPC, DOI, EPA, concerned citizens. (ELR Order No. 41909.)

CANAL ZONE GOVERNMENT

Final

Transmission Lines, Panama Canal Zone, December 19: Proposed is the granting of a license by the Canal Zone Government to the Instituto de Recursos Hidraulicos y Electrificación, an autonomous agency of the Republic of Panama, for the construction and operation of two 230 kV transmission lines across the Canal Zone. The lines are part of a hydroelectric development which will deliver power from the mountainous western end of the country to the urban and industrial center of Panama City. The action will result in the use of 580 acres for right-of-way, and the loss of some tropical forest (40 pages). Comments made by: FPC, EPA, DOT, STAT. (ELR Order No. 41905.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs Attn: DAEN-PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, (202) 693-7168.

Draft

Rend Lake, Operation and Maintenance, Franklin and Jefferson Counties, Illinois, December 16: The statement refers to the operation and maintenance of Rend Lake in Franklin and Jefferson Counties, Illinois. The lake is an 18,900 acre multi-purpose reservoir completed in 1972. This statement describes and reviews the environmental, economic, and social impacts created by the operation; the impacts or effects which will enhance or impair the project purposes; the effects of the reservoir upon the surrounding environment; and the effects of the changing environment on the lake and its future operations. (ELR Order No. 41884.)

Maintenance Dredging, several counties, Michigan, December 20: proposed is the maintenance dredging of 14 unpolluted harbors in the State of Michigan. There will be some adverse impact to aquatic biota (Detroit District). (ELR Order No. 41907.)

Columbia and Lower Willamette River maintenance, Oregon and Washington, Dec. 16: The statement refers to the maintenance dredging to 40 ft. deep of the Columbia River navigation channel from 2 miles seaward of its mouth to Columbia River mile 106.5 and Willamette River from mouth to Broadway Bridge to provide the depth required for deep-draft vessels. Included is maintenance of designated side channel projects, pile dikes and training dikes and initial rock removal projects. Adverse impacts include: disruption and removal of river bottom habitat and organisms; resuspension of bottom materials; temporary increases in turbidity; smothering of aquatic and terrestrial habitat and organisms during disposal (Portland District). (ELR Order No. 41878.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630 Waterside Mall, Washington, D.C. 20460, (202) 755-0940.

Draft

Sacramento Regional Wastewater Treatment, California, December 18: The statement refers to the Sacramento Regional Wastewater Management Program. The plan provides for a regionwide interceptor system to deliver raw wastes to a single advanced treatment plant located south of the city at the site of the existing plant. A disposal system would transport treated effluent to the Sacramento River for discharge near Freeport via a multipart diffuser system. There will be normal construction disruption from the project. (ELR Order No. 41904.)

Final

Wastewater Facilities, Houston, Texas, December 18: The proposed project involves the construction of a 20 million gallons per day (mgd) activated sludge treatment facility in the existing 1 mgd Alameda-Suns Facility Site. The expanded facility has been designed to treat the waste water in three areas through the year 1990. Adverse impacts are increased noise and odor levels, and construction disruptions. Comments made by: USDA, COE, HEW, DOT, State and local agencies. (ELR Order No. 41890.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, (202) 343-4161.

Draft

Federal Office Building, Anchorage, Alaska, December 17: The statement refers to the proposed construction of a Federal Office Building, Courthouse, and Parking Facility Complex in Anchorage. The facility would consolidate 23 federal agencies which are presently housed throughout the Greater Anchorage area. The complex will contain 462,000 sq. ft. of net useable space, and parking space for 725 vehicles. Adverse impact includes the displacement of individuals and businesses, and construction disruption (202 pages). (ELR Order No. 41898.)

Denver Federal Center, Lakewood, Jefferson County, Colorado, December 16: The proposed project provides for major repairs and alterations which will be undertaken at the Denver Federal Center, Lakewood, Jefferson County, for its continued use in providing adequate housing for Federal agencies. There will be construction inconveniences (25 pages). (ELR Order No. 41889.)

Final

Federal Youth Center, San Diego, California, December 16: The statement refers to the proposed construction of a 104,000 sq. ft. Federal Youth Center, which will be operated by the Bureau of Prisons. The facility which will be constructed in the Elliott Community of San Diego, will house up to 250 youthful offenders serving short term sentences. The center will have social and economic impacts on the surrounding community; the project is in conflict with the proposed land use of the Elliott Community and San Diego General plans (150 pages). Comments made by: AHP, USDA, COE, HEW, HUD, DOI, DOT, EPA, State and local agencies, and concerned individuals. (ELR Order No. 41899.)

Peace Arch and Pacific Highway Border Stations, Whatcom County, Washington, December 16: Proposed is the construction of two new border stations in order to replace two existing, inadequate facilities. The major environmental impacts will result from heavy vehicular traffic routed through the stations over I 5 and State Highway 543 from Canada. Comments made by: AHP, EPA, HUD, COE, USDA, DOI, TREA, State and local agencies. (ELR Order No. 41893.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Acting Director, Office of Community and Environmental Standards, Room 7206, 451 7th Street SW., Washington, D.C. 20410 (202) 755-5980.

Draft

Urban Renewal, Newburyport, Massachusetts, December 20: The statement refers to waterfront parcels 2, 2a, 3, 3a, 5, 6, and 8 of the Newburyport Urban Renewal Project. (ELR Order No. 41910.)

Final

"The Colony" Denton County, Texas, December 16: The statement refers to the review and acceptance of an application for approval of a housing subdivision. The project encompasses 2698 acres in southeastern Denton County. A total of 8950 units, including 6958 single family detached units, will be constructed. Among project impacts will be the expansion of urban land development into an area where little experienced urban planning has been practiced, and the creation of pressures on the Garza-Little Elm Recreation Reservoir, an under-developed and under-planned recreation resources. Comments made by: USDA, COE, DOC, HEW, DOI, EPA, DOT, State and local agencies. (ELR Order No. 41887.)

INTERSTATE COMMERCE COMMISSION

Draft

Transportation of Waste Products, December 16: The statement refers to the Transportation of "Waste" Products for Reuse and Recycling (General Motor Carrier Licensing). The proposed rules would permit the Commission to issue special certificates of public convenience and necessity for the transportation control program. The new rules are designed to simplify regulatory procedures to enhance the transportation of waste products in order to make a significant contribution to the national recycling program. The project will create additional traffic for back-haul movements. (ELR Order No. 41875.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, (202) 343-3891. Bureau of Sports Fisheries and Wildlife

Final

Proposed Yukon Flats National Wildlife Refuge, Alaska, December 18: The statement refers to the proposal that 3.6 million acres of public lands be designated by Congress as the Yukon Flats National Wildlife Refuge. The Secretary of the Interior would have the authority to acquire lands and interests within the Refuge boundary should they become available. The lands would be withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The Yukon Refuge would be studied for possible inclusion in the National Wilderness Preservation System. Overall impact of the proposal is the protection of the area's fish and wildlife resources (646 pages). Comments made by: USDA, COE, DOC, EPA, DOT, DOI, State agencies. (ELR Order No. 41900.)

Valentine National Wildlife Refuge, Cherry County, Nebraska, December 18: The statement refers to a legislative proposal that 16,317 acres of the Wildlife Refuge be designated as wilderness within the National Wilderness Preservation System. Such designation would commit the area to the forces of nature, and remove some future management options. The refuge provides breeding grounds for migratory birds and other wildlife (52 pages). Comments made by: USDA, COE, DOI, DOT, EPA, state agencies. (ELR Order No. 41901.)

Crescent Lake National Wildlife Refuge, Garden County, Nebraska, December 18: The statement refers to the proposed legislative designation of 24,502 acres of the Refuge as wilderness within the National Wilderness Preservation System. The Refuge is a significant breeding ground and resting area for migratory waterfowl. Wilderness designation would commit the area to the forces of nature and remove options for future development and intensified management (41 pages). Comments made by: USDA, DOI. (ELR Order No. 41902.)

Chase Lake Wilderness Area, Stutsman County, North Dakota, December 10: The statement refers to recommendation that approximately 4,155 acres of the Chase Lake National Wildlife Refuge in Stutsman County, be designated as wilderness within the National Wilderness Preservation System. A wilderness designation will commit the area to the forces of nature and remove some future management options (26 pages). Comments made by: USDA, DOI, EPA. (ELR Order No. 41873.)

NATIONAL PARK SERVICE

Draft

Guadalupe Mountains N.P., Master Plan (2), Culberson and Hudspeth Counties, Texas, December. This revised draft discusses the National Park Service's proposal of a master plan for Guadalupe Mountains National Park in Culberson and Hudspeth Counties, Texas. The master plan is a document to guide the development, public use, and management of this national park for an estimated period of at least 5 years. Adverse impacts are principally some future disturbance of natural vegetation, surface rock and soil around principal development sites, proposed road alignments, and the problems associated with increased use of the park by visitors. (ELR Order No. 41870.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th

Street SW., Washington, D.C. 20590 (202) 426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Petersburg to Kake Highway, Alaska, December 16: Proposed is the construction of a new gravel roadway connecting Kake and Petersburg, Alaska. Depending upon the route chosen, the Wrangell Narrows will be crossed either by a bridge or by ferry. The project will contribute to the loss of wilderness area through increased tourism as well as through the construction itself (236 pages). (ELR Order No. 41869.)

Moscow Couplet, U.S. 95, Latah County, Idaho, December 16: The proposed highway project is the improvement of congested traffic conditions on U.S. 95 through the city of Moscow in Latah County, Idaho, by the use of one-way couplet system. Total length of the project would be approximately 1 mile, with provision for curbs and gutters and on-street parking where feasible. Adverse impacts vary by alternative. (ELR Order No. 41874.)

North-South Arterial, Jamestown, Chautauqua County, New York, December 16: The statement refers to the proposed construction of a North-South Arterial in Jamestown from the South city line to South Main and Allen Streets. The 4-lane facility will have a total length of 1.3 miles. Adverse impacts are the demolition of 53 residential and 14 commercial buildings and the relocation of the occupants, and construction disruptions (205 pages). (ELR Order No. 41888.)

U.S. 101, Elk River-Port Orford Section, Curry County, Oregon, December 16: The statement refers to the proposed construction of the Elk River-Port Orford Section of U.S. 101 in Curry County, Oregon. The proposed project consists of a two-mile segment of highway on new location. Adverse impacts will result principally from construction activity and will particularly concern aquatic resources. (ELR Order No. 41876.)

F.M. 1765, Galveston County, Texas, December 17: The statement refers to the construction of 2.19 miles of F.M. 1765 from I-45 east to SR-3 adjacent to and representing the common city limits of Texas City and La Marque. The facility will provide a 6-lane roadway with curbs and gutters and a 14 ft. flush median for continuous left-turn lanes. There will be construction inconveniences caused by the project. (ELR Order No. 41894.)

U.S. 59, Fort Bend County, Texas, December 17: The proposed project consists of reconstructing a segment of U.S. 59 as a controlled-access facility along a route adjacent to and including the existing right-of-way. The total project length is 11.7 miles of which approximately 4.9 miles are on entirely new location. There will be the normal construction disruptions caused by the project (107 pages). (ELR Order No. 41897.)

Final

State Highway Route 49, Placer County, California, December 16: Proposed is the widening and improvement of 2.2 miles of SH 49 between the north Auburn underpass and Dry-Creek Road. Construction consists of widening the existing highway from two lanes to four lanes with left-turn channelization and includes the relocation of a railroad underpass. Section 4(f) land from the Auburn Recreation Area and Park District Regional Park may be affected. Two mobile homes and one business may be displaced (two volumes). Comments made by: DOI, EPA, State and local agencies. (ELR Order No. 41879.)

Doolittle Drive (Route 61), Alameda County, California, December 16: The proposed project consists of widening a mile

long portion of Route 61, Doolittle Drive from two lanes to four lanes with parking. Increases in the peak noise level will occur. Comments made by: EPA, AHP, DOI, USDA, COE, HEW, HUD, local agencies, and concerned citizens. (ELR Order No. 41881.)

Shoreline Parkway, Escambia County, Florida, December 17: The statement refers to the construction of the proposed Shoreline Parkway from Barrancas Street to Pensacola Bay Bridge on U.S. 98. Project length is 2.9 miles. Four families and one business will be displaced. A section 4(f) determination has been filed to acquire land from the Pensacola Historic District (145 pages). Comments made by: EPA, DOI, HUD, HEW, USDA, DOC, State agencies. (ELR Order No. 41896.)

N-15, and U.S. 6, Saline and Seward Counties, Nebraska, December 16: The project involves the reconstruction of 8.8 miles of U.S. 6 and N-15. The project will require 86 acres of land. Two bridges will be replaced, one over Johnson Creek and one over the west fork of the Big Blue River. A 4(f) review has been filed to obtain land from the Blue River State Wayside Area, for right of way. Adverse impacts are: loss of land and wildlife habitat, and increased water pollution due to the bridge crossings. Comments made by: DOT, COE, USDA, HUD, DOI, EPA, State agencies. (ELR Order No. 41880.)

Interstate 35, Oklahoma County, Oklahoma, December 17: The statement refers to the proposed improvement and reconstruction of Interstate 35 from I-440 in Oklahoma City north to U.S. 66 in Edmond, a distance of 8.8 miles. Adverse impacts are the loss of 280 acres of agricultural land and the displacement of 26 families and 16 businesses (68 pages). Comments made by: EPA, DOI, HUD, USDA, HEW, COE, State and local agencies. (ELR Order No. 41895.)

GARY L. WIDMAN,
General Counsel.

[FR Doc.74-30351 Filed 12-27-74; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

AVAILABILITY OF ENVIRONMENTAL PROTECTION

[FRL 310-8]

Environmental Impact Statements and Other Agency Actions

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of November 1, 1974 and November 30, 1974.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix II contains the definition of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this reviewing period. The listing will include the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix IV contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments,

and the source for copies of the comments as set forth in Appendix V.

Appendix V contains a listing of the names and addresses of the sources for copies of EPA comments listed in Appendices I, III, and IV.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Inquiries Branch, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: December 11, 1974.

SHELDON MEYERS,
Director,
Office of Federal Activities.

APPENDIX 1—DRAFT ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1 AND NOV. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
Atomic Energy Commission:			
D-AEC-A00107-00.....	Management of commercial high level and transuranium, contaminated radioactive wastes.	3	A
D-AEC-A09018-00.....	Use of mixed oxide fuels in light water-cooling reactors, geomo, recycle plutonium in light water-cooled reactors.	ER-2	A
Department of Agriculture:			
D-AFS-J65004-MT.....	Multiple use plan for the Ward-Eagle planning unit, Mont.	ER-1	I
D-AFS-K08001-00.....	Cholla project, power plant expansion, coal mine expansion transmission line, Albuquerque, N. Mex., and Arizona.	ER-2	J
D-AFS-L61007-OR.....	The Oregon Dunes National Recreation Area, management plan, Oreg.	LO-2	K
D-AFS-L61008-OR.....	Drift Creek management unit, Shuslaw National Forest, Oreg.	LO-1	K
D-AFS-L61009-OR.....	Wilderness suitability report, Oregon Dunes National Recreation Area, Shuslaw National Forest, Coos, Douglas, Lane Counties, Oreg.	LO-1	K
D-AFS-L65002-AK.....	Portage-Twelve Mile timber sale, Tongass National Forest, Alaska.	LO-2	K
D-REA-F08002-MN.....	230 kV transmission line, Canadian border to Hibbing, St. Louis County, Minn.	ER-2	F
D-REA-J08000-CO.....	Transmission lines, Bayfield to Pagosa Springs, 115 kV, Basalt to Aspen and Snowmass Tapline, Colo.	ER-1	I
D-SCS-C36006-NY.....	Oak Orchard Creek watershed, Genesee and Orleans Counties, N.Y.	ER-2	G
D-SCS-F36003-IN.....	Lye Creek Drain watershed, Montgomery County, Ind.	LO-2	F
D-SCS-H36003-IA.....	Pierce Creek No. 2 watershed, Page and Montgomery Counties, Iowa.	LO-2	H
D-SCS-J38000-SD.....	Mission Hill watershed protection plan, S. Dak.	LO-2	I
Corps of Engineers:			
D-COE-B36001-ME.....	St. John River Flood Protection, Fort Kent, Aroostook County, Maine.	ER-2	B
D-COE-D28001-VA.....	Little Creek water supply reservoir, James City County, Newport News, Va.	ER-2	D
D-COE-D35001-VA.....	Replacement study for Craney Island disposal area, Port of Hampton Roads, Va.	ER-2	D
D-COE-D35002-PA.....	Diked disposal site No. 2, Erie County, Erie Harbor, Pa.	LO-1	D
D-COE-D36004-VA.....	Flood protection measures at Richmond, Va.	ER-2	D
D-COE-E32002-SC.....	Charleston Harbor deepening project, Charleston Harbor and Shipyard River, S.C.	ER-2	E
D-COE-E32003-FL.....	Breakwater at Eastpoint, Apalachicola Bay, Fla.	ER-2	E
D-COE-E33002-AL.....	Mobile Harbor, maintenance dredging, Mobile County, Ala.	ER-2	E
D-COE-E36005-GO.....	West Point Lake, Chattahoochee River, Alabama and Georgia.	ER-2	E
D-COE-E36007-00.....	Nonconnah Creek, watershed protection and flood control, Tennessee and Mississippi.	ER-2	E
D-COE-F07002-IL.....	Collins Generating Station, Grundy County, Ill.	EU-1	F
D-COE-G32004-TX.....	Maintenance and Dredging, Brazos Island, Tex.	LO-2	G
D-COE-G32007-OK.....	Operation and maintenance program, Great Salt Plains Lake, Salt Fork of Arkansas River, Oklahoma Canton Lake, North Canadian River, Fort Supply Lake, Wolf Creek, Alfalfa County, Okla.	LO-2	G
D-COE-G34002-TX.....	Lake Brownwood modification, Pecan Bayou Watershed, Colorado River, Tex.	LO-2	G
D-COE-G36002-TX.....	Burnett, Crystal, and Scott Bays and vicinity, Baytown, Harris County, Tex.	LO-1	G
D-COE-K35000-CA.....	Maintenance and dredging, Petaluma River, Sonoma and Marin Counties, Calif.	LO-1	J
D-COE-K36002-CA.....	Sacramento River, major and minor tributaries, Calif.	LO-1	J
D-COE-L36006-WA.....	Shelton Creek flood control and storm drainage project, Shelton, Wash.	LO-2	K
D-COE-L36007-OR.....	Monary second powerhouse, lock and dam, Columbia River, Oreg.	LO-2	K
Department of Commerce:			
D-NOA-E61006-NC.....	Designation of U.S.S. Monitor site as a unique and research marine sanctuary, 16.10 miles south to southeast of Cape Hatteras, N.C.	LO-1	E
Federal Power Commission:			
D-FPC-K05001-CA.....	Escondido project No. 176, Escondido and Vista, Calif.	3	J

APPENDIX 1—DRAFT ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN
NOV. 1 AND NOV. 30, 1974—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
General Services Administration:			
D-GSA-381000-MT.....	Federal Office Building and Courthouse, Helena, Mont.....	LO-1	I
Department of Housing and Urban Development:			
D-HUD-B89001-MA.....	Downtown Malden general neighborhood renewal plan area and the industrial park, urban renewal area, Middlesex County, Malden, Mass.	LO-2	B
D-HUD-C60001-PR.....	Disposition of the San Patricio surplus Federal real property area, San Juan, P.R.	LO-2	C
Department of the Interior:			
D-BLM-A02062-TX.....	Outer Continental Shelf oil and gas general lease sale, No. 37, 551 tracts of submerged lands offshore Texas.	ER-2	A
Department of State:			
D-STA-A39102-00.....	Colorado River international salinity control project, Department of State, Department of the Interior, Bureau of Reclamation and Office of Saline Water, and the International Boundary and Water Commission.	ER-2	J
DS-STA-A39102-00.....	Colorado River international salinity control project, supplement, Department of State, Department of the Interior, Bureau of Reclamation and Office of Saline Water, and the International Boundary and Water Commission.	ER-2	J
Department of Transportation:			
D-CGD-K11004-CA.....	Coast Guard air station, Arcata, Humboldt County, Calif.	LO-1	J
D-FAA-D51001-WV.....	Raleigh County Memorial Airport, Beckley, W. Va.	LO-2	D
D-FAA-E51002-AL.....	Albertville Municipal Airport, expansion of an existing airport, Albertville, Ala.	LO-1	E
D-FAA-E51004-MS.....	Roscoe Turner Field, Corinth, Miss.	LO-2	E
D-FAA-H51004-MO.....	Sikeston Memorial Airport, Mo.	ER-2	H
D-FAA-H51005-MO.....	Cassville Municipal Airport, Barry County, Cassville, Mo.	LO-2	H
D-FAA-H51006-IA.....	Eldora Municipal Airport, Eldora, Iowa.	LO-2	H
D-FHW-B40004-MA.....	Route 25, Wareham, Plymouth, Bourne, Plymouth and Barnstable Counties, highway extension, Mass.	ER-2	B
D-FHW-B40005-MA.....	I-95, Route 128 interchange and Route 128 improvements, Essex County, Lynnfield, Peabody, Mass.	ER-2	B
D-FHW-C40005-PR.....	Reconstruction and location of Route 20, Guaynabo Freeway, San Juan, P.R.	ER-2	C
D-FHW-C40006-NY.....	Newburgh-Beacon bridge expansion, I-84, Orange and Dutchess Counties, N.Y.	LO-2	C
D-FHW-C40007-NY.....	Genesee Expressway, thruway to outer loop, arterial extension, Monroe County, N.Y.	ER-2	C
D-FHW-D40003-WV.....	US 60, Diamond to Hugheston, Kanawha City, W. Va.	LO-2	D
D-FHW-D40004-WV.....	Relocation of US 50 and WV-20 to Joyce St., Clarksburg, Harrison County, W. Va.	ER-2	D
D-FHW-E08003-FL.....	City of Tallahassee, high voltage electric transmission line from Arvoh B. Hopkins generating station to bulk power substation No. 7, Fla.	LO-1	E
D-FHW-E40011-TN.....	Loudon and Blount Counties, TN-95 extending from just west of county line to the intersection of TN-95 and O'Dell Rd., Tenn.	ER-2	E
D-FHW-E40014-TN.....	Dyer County, I-155 from 1 mile east of Lenox Road to interchange with proposed relocated TN-3 and US 51, Tenn.	LO-2	E
DS-FHW-E40015-NC.....	Mecklenburg County, Charlotte inner loop from NC-49 to I-85 connector to Douglas Municipal Airport, N.C.	LO-2	E
D-FHW-E40019-MS.....	Project 257, Bailey Ave. overpass, Jackson, Hinds County, Miss.	LO-2	E
D-FHW-F40014-IL.....	FAL 474, FAL 74 west of Peoria to FAL 74 northwest of Morton, Peoria and Tazewell Counties, Ill.	LO-2	F
D-FHW-F40015-IL.....	Federal aid I-55, Lawndale to McLean, Logan and McLean Counties, Ill.	LO-2	F
D-FHW-F40018-IL.....	FA 7, IL-38, widening, city of DeKalb, DeKalb County, Ill.	LO-2	F
D-FHW-G40014-TX.....	FM 1382 and northeast Eight St. from spur 303 north to the Dallas-Fort Worth Turnpike in the city of Grand Prairie, Dallas County, Tex.	LO-1	G
D-FHW-H40008-IA.....	Iowa 2, Lee County, Iowa.	LO-2	H
D-FHW-H40009-IA.....	Freeway 520, Webster and Hamilton Counties, Iowa.	3	H
D-FHW-H40010-NB.....	NB-11, Scotts-South, Howard and Greeley Counties, Nebr.	LO-2	H
D-FHW-J40004-CO.....	Project No. E-019-2(14) SH 190-550, Durango South, LaPlata County, Colo.	3	I
D-FHW-J40006-MT.....	Reconstruction of Forest Highway 13, US 2, Glacier National Park, Mont.	LO-1	I
D-FHW-K40006-CA.....	Improvement of State Highway Route 1, San Luis Obispo County, Calif.	LO-1	J
Tennessee Valley Authority:			
D-TVA-E05002-TN.....	Gallatin Steam Plant, 4-unit gas turbine peaking plant addition, Sumner County, Tenn.	ER-2	E
D-TVA-E05003-TN.....	Raccoon Mountain pumped storage project, Marion County, Tenn.	ER-2	E

APPENDIX II—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection

EPA has no objection to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III—FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1, AND NOV. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture:			
F-AFS-A09023-FL	Apalachicola National Forest, 230 kV transmission line right-of-way, Fla.	EPA had no objections to the project as proposed.	E
F-AFS-A61235-CA	Silver Basin winter sports development, Amador and El Dorado Counties, Calif.	EPA reserved any final comment on this proposed action until such time as the Forest Service's air quality study is completed. The Forest Service estimates that this study will be completed in March 1975.	J
D-REA-A08024-KY	Addition of a new 66 MW combustion turbine to the Sebree generating power plant in Henderson and Webster Counties, Ky.	EPA expressed no objections to the proposed project.	E
F-SCS-A36353-MN	Canby Creek Watershed project, Lincoln and Yellow Medicine Counties, Minn.	EPA generally had no objections to the project as proposed.	F
Corps of Engineers:			
F-COE-A07083-WI	Columbia generating station, Wisconsin Power & Light Co., Columbia County, Wis.	EPA had no objections to the proposed project as long as the proposed mitigating measures are undertaken by the Applicant.	F
F-COE-A34078-KY	Red River Lake project, Kentucky River basin, Ky.	EPA expressed severe environmental reservations about the proposed action based on these principal issues: (1) Violation of dissolved oxygen standards during summer months in the hypolimnion due to temperature stratification; (2) Grave concern for eutrophication problems accelerated by agricultural activities and increased urban runoff from Lake-Inspired development; (3) Elimination of at least three species of cool water fish from the project area; and (4) Violation of the National Technical Advisory Committee drinking water criteria for iron and manganese during Autumn or overturn months.	E
F-COE-A34098-AL	Claiborne lock and dam, Alabama River, Ala.	EPA generally had no objections to the project as proposed.	E
F-COE-A36148-OH	Local protection project, Newark, Ohio.	do.	F
Department of Defense:			
F-UAF-A85017-FL	150 military family housing units for fiscal year 1974, Okaloosa County, Elgin Air Force Base, Fla.	do.	E
Federal Power Commission:			
F-FPC-A36327-WA	Ross development of project No. 553, Skagit River, Wash.	EPA had no objections to the proposed project.	K

NOTICES

APPENDIX III—FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1, AND NOV. 30, 1974—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Health, Education, and Welfare: F-FHW-A81094-IL....	Grant Hospital modernization and expansion, Chicago, Cook County, Ill.	EPA had no objections to the proposed project.	F
Department of Housing and Urban Development: F-HUD-A89134-PA....	Lock Haven urban renewal plan, Lock Haven, Pa.	EPA expressed no objections to the project but suggested continued study of flooding characteristics of the West Branch Susquehanna River. This would allow appropriate modifications in Lock Haven's evolving flood management programs to meet any possible changes of flooding conditions related either to increased runoff due to changes in upstream conditions or increased flow velocity and higher river staging due to local landfill activities and levee construction.	D
F-HUD-A85018-MO..	Demolition of Pruitt-Igoue public housing complex, St. Louis, Mo.	EPA expressed environmental reservations with regard to the proposed action. EPA requested that the final EIS: (1) Identify solid waste disposal sites for an estimated 270,000 cubic yards of rubble and evaluate the environmental impacts of disposal; (2) Provide information on future use of the project land; (3) Assess the noise impacts of the demolition; (4) Identify and evaluate the impacts of solid waste transport routes; (5) Provide information and evaluate the impacts of the alternatives to the action; and (6) Provide estimates of cost of the proposed action.	H
Department of the Interior: F-BLM-K09000-00....	Proposed motorcycle race between Yermo, Calif., and Las Vegas, Nev.	EPA believes that the final statement adequately assesses the environmental impact of the proposed action. However, EPA recognizes that the actual environmental damage that may result from the race depends on the success of mitigating measures. EPA recommends a post-race survey to determine success of mitigation.	K
F-DOI-C64001-NJ....	White-tailed deer hunting program, Great Swamp National Wildlife Refuge, N.J.	EPA had no objections to the project as proposed.	C
Department of Transportation: F-CGD-A39061-MI...	Coast Guard icebreaking activity on the Great Lakes, Mich.	EPA generally had no objections to the project as proposed.	F
F-FAA-A51283-AZ....	Phoenix Sky Harbor International Airport, Phoenix, Ariz.	The final environmental statement did not contain sufficient information and analysis on the air quality impact of the proposed improvement program of Sky Harbor to enable EPA to carry out its section 309 responsibilities. EPA requested that further information be provided.	J
F-FAA-A51825-MS...	Union Municipal Airport, construction of new airport, Neshoba County, Union, Miss.	EPA had no objections to the proposed project.	E
F-FAA-A51837-AL...	Thomas C. Russell Field, Alexander City, improvement and enlargement, Ala.	EPA generally had no objections to the project as proposed.	E
F-FAA-A51848-NC...	Johnston County Airport, Smithfield, N. C.	EPA had no objections to the project as proposed.	E
F-FAA-A52067-00....	Proposed noise standards, propeller-driven small airplanes.	EPA reaffirmed the strong environmental reservations previously expressed to the Federal Aviation Administration (FAA) concerning the proposed standard. The reservations expressed in this letter centered primarily on the proposed noise compliance levels and the proposed noise evaluation measure. Also of serious concern were the simplified flight procedures and the proposed aircraft performance correction concept.	A
F-FHW-A41662-CA...	State Highway Route 40, improvement project, Placer County, Calif.	EPA had no objections to the proposed project.	J
F-FHW-A41633-MI...	US 131 freeway from MI-46 to 20 Mile Road in Montcalm and Mecosta Counties, Mich.	do.....	F
F-FHW-A41670-MI...	East Boulevard extension, South Blvd. to Woodward Ave., Pontiac, Oakland County, Mich.	do.....	F
F-FHW-A41787-GA...	Cobb County, project S-1385(2), 4-lane urban road, Lee Industrial Blvd. to Oakdale Rd., Ga.	do.....	E
F-FHW-A41887-AL...	Macon and Elmore Counties, project Nos. S-4418 and S-2626, State 1350-B, AL-299, Ala.	EPA had no objections to the project as proposed.	E

APPENDIX III—FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1, AND NOV. 30, 1974—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
F-FHW-A41789-NY...	Hornell, north-south arterial, north section, Steuben County, N.Y.	EPA requested that FHWA provide additional information to enable a complete review of the impact statement and to facilitate the consideration of an indirect source permit. The following deficiencies were noted: (1) Secondary effects such as development were not adequately discussed; (2) Alterations to the Corps of Engineers flood control project were discussed but the extent or effects of the alterations were not indicated; and (3) The air quality diffusion analysis did not include enough information for a complete agency evaluation.	O
F-FHW-A41992-AL...	Tuscaloosa County, project No. APL 1296(002) and SG-6317(102), Holt-Peterson Rd., Ala.	EPA had no objections to the project as proposed.	E
F-FHW-A42341-MI...	Reconstruction of the Scottsdale Bridge, US 31, Berrien County, Mich.	do.....	F
F-FHW-E40016-AL...	Mobile County, project F-377(2), Range Line Rd., Ala.	EPA generally had no objections to the proposed project.	E
F-FHW-E40017-NC...	Rockingham and Caswell Counties, R-39, US 29, Ruffin to Virginia, North Carolina.	EPA generally had no objections to the proposed project. However, EPA recommended that a supplement be prepared to provide: (1) Clarification of the effects of open burning and identification of measures to minimize such effects; (2) Average daily traffic for project 10 years after completion; and (3) Prediction of 8-hour concentrations and comparison with 8-hour standards.	E
F-FHW-E40020-AL...	I-20-1(30), Irondale to relocated Old Leeds Rd., Ala.	EPA generally had no objections to the proposed project.	E

APPENDIX IV—REGULATIONS, LEGISLATION AND OTHER FEDERAL AGENCY ACTIONS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1, AND NOV. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
Atomic Energy Commission: R-AEC-A00021-00....	10 CFR Part 20, transuranic waste disposal, proposed standards for protection against radiation.	EPA deferred commenting until the draft environmental impact statement relating to this proposed rule is issued.	A
R-AEC-A00022-00....	10 CFR Part 150, transuranic waste disposal, exemptions and continued regulatory authority.	EPA deferred commenting until the draft environmental impact statement relating to this proposed rule is issued.	A
Corps of Engineers: R-COE-A24058-00....	33 CFR Part 209, review of NPDES permits, proposed policy, practice, and procedures.	EPA commended the regulations for recognizing that in most cases substantial impairment to navigation and anchorage will cease with installation of necessary treatment facilities and urged that the timetables contained in the regulations for permit review be followed so that substantial delays in permit issuance will be avoided.	A
Department of Commerce: R-NOA-A99093-00....	15 CFR Part 923, coastal zone management program approval regulations, criteria and procedures.	In EPA's view the regulations are generally adequate; however, modifications to several sections were suggested in an effort to strengthen the regulations from an environmental point of view. The major portion of the comments were in the form of suggested wording to more closely integrate the planning approaches of EPA and NOAA.	A
Federal Energy Administration: R-FEA-A04013-00....	10 CFR Parts 211 and 212, oil, proportionate allocation among refiners.	EPA supported FEA's procedure whereby the number of entitlements to importers of residual fuel oil and No. 2 fuel oil would be based on the prevailing differential between each products' low-sulfur domestic and low-sulfur imported prices. Such a procedure appears to remove a major disincentive to the importation of low-sulfur products and we encourage its adoption.	A
Federal Trade Commission: R-FTC-A86071-00....	16 CFR Chapter 1, automobile fuel economy claims, notice of public hearing and opportunity to submit data, views or arguments concerning rulemaking.	At the request of the FTC, EPA will present testimony at a public hearing scheduled for Dec. 6, 1974.	A

APPENDIX III—FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN NOV. 1, AND NOV. 30, 1974—Continued

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Housing and Urban Development: R-HUD-A85036-00.....	24 CFR Part 570, community block grants.	EPA expressed significant reservations to the proposed regulations. EPA provided HUD with comments on the five following areas of concern:	A
R-HUD-A85037-00.....	24 CFR Part 58, environmental review procedures, proposed policies and procedures.	(1) The number and classes of applicants to whom the NEPA responsibility would be delegated; (2) The determination of an applicant's capacity for discharging the NEPA responsibility; (3) The monitoring and overview of an applicant's performance in discharging the NEPA responsibilities; (4) Critical definitions and exemptions; and (5) Procedural items such as adequate notice and public hearings.	A
Department of the Interior: R-IGS-A02063-00.....	Notices, Atlantic area, intention to develop outer Continental Shelf.	EPA has consistently pointed out the need for consolidating requirements for discrete operations within the appropriately titled order. This concern has focused on orders No. 7 and No. 8, in which are found various pollution control standards. In conformance with prior recommendations for the Alaskan OCS, EPA continues to urge proper organization and clarification of pollution control requirements that will reflect latest legislation, regulation, and prevention engineering, as well as EPA discharge permitting authority. OCS operating orders should be in agreement with EPA effluent limitations for the oil and gas extraction industry.	A
Department of Transportation: R-DOT-A03056-00.....	40 CFR Part 192, offshore pipeline facilities, proposed standards.	EPA recommended that the proposed regulation address equally the goals of human safety and pollution prevention. As currently written, the regulation is concerned with human safety to a much greater extent than with pollution prevention.	A
R-FAA-A52079-00.....	14 CFR Part 36, Noise standards, aircraft type and airworthiness certification.	EPA expressed no objections to the FAA regulation as presently written.	A
R-FHW-A86075-00.....	23 CFR Part 470, Urban area boundaries.	In EPA's view the regulations were generally adequate; however, modifications were suggested in an effort to strengthen the regulations from an environmental point of view.	A
R-FHW-A86076-00.....	23 CFR Part 750, highway beautification, proposed outdoor advertising controls.	EPA recommended that criteria adopted by States and/or local zoning authorities relative to size, lighting, and/or spacing of signs be no less restrictive than the criteria presently contained in agreements between the State(s) and the Secretary of Transportation. In addition, EPA recommended there be a maximum period of time a "grandfather clause" sign be allowed to remain in use.	A

APPENDIX V—SOURCE FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, 1421 Peachtree Street NE, Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.
K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101.

[FR Doc.74-30012 Filed 12-27-74; 8:45 am]

[FRL 310-2; OPP-32000/162]

NOTICE OF RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available

for examination at the Environmental Protection Agency, Room EB-31, East Tower, 401 M Street SW., Washington, D.C. 20460.

On or before February 28, 1975, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division, (WH-569), Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60-day period has expired. If no claims are received within the 60-day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60-day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after February 28, 1975.

APPLICATIONS RECEIVED

EPA File Symbol 8419-RT. The Andersons, PO Box 119, Maumee OH 43537. THE ANDERSONS CRABGRASS PREVENTER WITH BALFIN. Active Ingredients: N-butyl-N-ethyl-a,a-trifluoro-2,6-dinitro-p-toluidine 0.58%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 10445-RL. Calgon Corp., PO Box 1346, Pittsburgh PA 15230. H-204A MICROBIOCIDAL. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 19.5%; Bis (Tri-n-Butyltin) Oxide 7.5%. Method of Support: Application Proceeds under 2(c) of interim policy.

EPA Reg. No. 239-2358. Chevron Chem. Co., Ortho Div., 940 Hensley St., Richmond CA 94801. ORTHO CRAB GRASS & DANDELION KILLER. Active Ingredients: Dodecylammonium Methanearsonate 8.0%; Octylammonium Methanearsonate 8.0%; Octylammonium Salt of 2,4-Dichlorophenoxyacetic Acid 8.16%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 100-LTE. Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro NC 27409. CIBA-GEIGY AATREX 90WP. Active Ingredients: Atrazine: 2-chloro-4-ethylamino-6-isopropylamino s-triazine 85.5%; Related compounds 4.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7273-RUL. Crown Chemicals, 4995 N Main St., Rockford IL 61101. CROWN ALL PURPOSE LIVESTOCK AND POULTRY DUST WITH RABON. Active Ingredients: 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate 3.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 279-EOOT. FMC Corp., 100 Niagara St., Middleport NY 14108. PYRENONE FOOD PLANT FOGGING INSECTICIDE. Active Ingredients: Pyrethrins 0.5%; Piperonyl Butoxide, Technical 5.0%; Petroleum Distillate 94.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 35609-R. General Ecology, Inc., General Ecology Bldg., 685 Kromer Ave., Berwyn PA 19312. CARE-FREE! POOLIFIER. Active Ingredients: Silver 0.5%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 869-RLR. Green Light Co., PO Box 16192, San Antonio TX 78246. GREEN LIGHT KILTHANE SPRAY. Active Ingredients: 1,1-bis(chlorophenyl)-2,2,2-trichloroethanol 18.5%; Xylene 73.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 35611-R. Hollis Applied Sciences Co., PO Box 38245, Memphis TN 38138. HASCOCIDE 45. Active Ingredients: Poly[oxyethylene(dimethyliminio)-ethylene(dimethyliminio)ethylene dichloride] 20.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 3837-UG. LuBar Co., 1708 Campbell, Kansas City MO 64108, 123 ALGAECIDE. Active Ingredients: Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride] 1.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 3837-UE. LuBar Co., 1708 Campbell, Kansas City MO 64108. SPT. Active Ingredients: Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)-ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 1706-RUE. Nalco Chemical Co., 6216 W 66th Pl., Chicago IL 60638. NALCO 4WC264 MICROORGANISM CONTROL CHEMICAL. Active Ingredients: Sodium dichloro-s-triazinetriene dihydrate 18.0%. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 33576-EO. Olin Water Services, Olin Corp., 120 Long Ridge Rd., Stamford CT 06904. OLIN 3301. Active Ingredients: Methylene Bis Thiocyanate 10%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 7256-1. Matheson Gas Products, A Div. of Will Ross, Inc., 2727 W Good Hope Rd., PO Box 2012, Milwaukee WI 53201. "ETHYLENE 95%". Active Ingredients: Ethylene 95%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 4876-LA. Seedkem, 526 NW 4th, Evansville IN 47708. DOUBLE DUTY GARDEN DUST. Active Ingredients: Carbaryl (1-Naphthyl N-Methylcarbamate) 4.00%; Maneb (Manganese Ethylene Bisdithiocarbamate) 5.00%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 12042-A. Verax Chemical Co., 3753 Brooklyn Ave., NE, Seattle WA 98105. HYCO DISINFECTANT-SANITIZER-DEODORIZER. Active Ingredients: n-Alkyl (60%, C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 34810-R. Wexford Labs., Inc., 1035 S Vandeventer Ave., St. Louis MO 63110. WEX-SAN. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 34810-G. Wexford Labs., Inc. WEX-SAN-M. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.50%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetraacetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 34810-E. Wexford Labs., Inc. SUPER WEX-SAN. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 6.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 6.25%; Tetrasodium ethylenediamine tetraacetate 3.60%; Sodium Carbonate 3.00%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 662-LO. Wyandotte Chemical Co., J. B. Ford Div., Wyandotte MI 48192. WYANDOTTE STERI-CHLOR C HIGHLY-SOLUBLE CHLORINE SANITIZER. Active Ingredients: Sodium dichloro-s-triazinetriene dihydrate 7.2%. Method of Support: Application proceeds under 2(c) of interim policy.

Dated December 13, 1974.

JOHN B. RITCH, Jr.,
Director,
Registration Division.

[FR Doc.74-29708 Filed 12-27-74; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 20252, 20253; File Nos. BP19550, 19595]

JULIE P. MINER (KDXU) AND ALBERT L. CRAIN

Order Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of JULIE P. MINER (KDXU) St. George, Utah. Requests: 890 kHz, 10 kW, DA-N, U, Docket No. 20252, File No. BP-19550. ALBERT L. CRAIN St. George, Utah. Requests: 890 kHz, 10 kW, 50 kW-LH, DA-N, U, Docket No. 20253, File No. BP-19595, For Construction Permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications, which are mutually exclusive in that they seek the same frequency in St. George, Utah.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive daytime service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive primary daytime service, together with the

availability of other primary aural daytime services (1 mV/m or greater in the case of FM) in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Albert Crain indicates, in an amendment, that a random general public survey was conducted. However, he has failed to identify the person or persons who conducted these interviews. In light of question and answer 11(b) of the Commission's Primer on the Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971), an appropriate issue will be included.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the efforts made by Albert Crain to ascertain the community problems of the area to be served and the means by which the applicant proposes to meet these problems.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

6. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: December 9, 1974.

Released: December 13, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 74-30315 Filed 12-27-74; 8:45 a.m.]

[Docket Nos. 20283, 20284; File Nos.
BPH 8433, BPH 9052]

PELLA COMMUNICATIONS, INC. AND TULIP CITY BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of: PELLA COMMUNICATIONS, INC., Pella, Iowa, Requests: 103.3 MHz, No. 277; 100 kW (H&V); 451 feet, Docket No. 20283, File No. BPH-8433.

Joseph L. Stone and Earl W. Fessler, d/b as TULIP CITY BROADCASTING CO., Pella, Iowa, Requests: 103.3 MHz, No. 277; 58.77 kW (H&V); 339 feet, Docket No. 20284, File No. BPH-9052, For Construction Permits.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications which must be designated for comparative hearing since they seek the same channel in the same community.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services (1 mV/m or greater in the case of FM) in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Tulip City Broadcasting Co. (Tulip), intends to locate its studio 4½ miles northwest of the city of Pella on Highway 163, at its transmitter site. Section 73.210 of the Commission's rules requires that the main studio of a commercial FM station be located in the proposed city of license, or that good cause be shown for locating the main studio outside that community. Tulip states that the proposed studio site is owned by the applicant, and provides better access and better parking facilities for employees and visitors than would be a leased facility within the city limits. In addition, the applicant states that a better quality signal can be generated from the transmitter site by having a direct link between the audio equipment and the transmitter. Finally, the applicant claims that having the same location for the studio and transmitter is more economical, and that suitable facilities within the corporate limits of Pella, which would be available for leasing, are limited. In view of the foregoing, we find that good cause to locate the studio at the proposed site has shown in this instance.

4. Tulip City Broadcasting Co., will require \$73,200 to construct and operate the proposed facility for a period of one year, without revenue, itemized as follows:

Equipment	\$22,600
Land	2,200
Buildings	1,500
Miscellaneous	10,900
Working capital requirement	30,000
Interest on bank loan	6,000
Total	73,200

To meet this requirement, the applicant relies upon existing capital (\$3,500), new capital (\$35,450), and a \$50,000 bank loan. However, the bank loan fails to state the terms of repayment and collateral as required by section III, page 3, paragraph 4(e) of the application form. As a result, an issue will be specified to determine its availability.

5. Pella Communications' community survey failed to state whether any significant labor unions exist in Pella, and no labor union leaders were included in the list of interviews with community leaders. In addition, the applicant failed to state the specific method by which members of the general public were selected for interview. As a result, no determination can be made as to whether the survey was truly random. Finally, since no statement was made as to precisely who conducted the surveys, it cannot be determined whether the requirements of question and answer 11 of the Primer on the Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971), have been met. As a result, an appropriate issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. With respect to the application of Tulip City Broadcasting Co., to determine:

(a) The terms of repayment and collateral for the \$50,000 bank loan and its availability to the applicant; and

(b) Whether, in light of the evidence adduced pursuant to (a), above, the applicant is financially qualified to construct and operate as proposed.

2. To determine the efforts made by Pella Communications to ascertain the community problems of the area to be served and the means by which the applicant proposes to meet those problems.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

8. *It is further ordered*, That, Tulip City Broadcasting Co., having demonstrated that good cause exists for the

location of the main studio outside the city limits of Pella, Iowa, and that the location is consistent with operation of the station in the public interest, permission to so locate the main studio IS GRANTED.

9. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

Adopted: December 13, 1974.

Released: December 20, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-30316 Filed 12-27-74;8:45 am]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," Radio Technical Commission for Marine Services (RTCM) meetings scheduled for the future are as follows:

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary

Special Committee No. 65

"SHIP RADAR"

Notice of 34th Meeting
Wednesday, January 15, 1975—1:30 p.m.
Conference Room 8210
2025 M Street NW.
Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Adoption of Agenda; Appointment of Rapporteur.
3. Acceptance of SC-65 Summary Records.
4. Progress Report of Collision Avoidance Working Group.
5. Small Boat Radar Specifications.
6. Other business.
7. Establishment of next meeting date.

Collision Avoidance Working Group:
The Collision Avoidance Working Group

will hold a meeting on Wednesday, January 15, 1975, beginning at 9:30 a.m., in Conference Room 8210, 2025 M Street NW., Washington, D.C.

Irvin Hurwitz, Chairman SC-65
Federal Communications Commission
Washington, D.C. 20554
Phone: (202) 632-7197.

Special Committee No. 66

"Receiver Standards for the Maritime Mobile Service"

Notice of 27th Meeting
Wednesday, January 15, 1975—9 a.m. (all-day meeting)
Conference Room A205
1229-20th Street, NW.
Washington, D.C.

AGENDA

1. Call to Order; Chairman's report.
2. Adoption of Agenda.
3. Acceptance of Summary Records.
4. Reports on Work Assignments.
5. Approval of submitted papers.
6. Discussion of problem areas.
7. Solicitation of Work Assignments.
8. Other business.
9. Establishment of next meeting date.

H. R. Smith, Chairman, SC-66
ITT Mackay Marine
441 U.S. Highway #1
Elizabeth, N.J. 07202
Phone: (201) 527-0300.

RTCM Executive Committee

Notice of January meeting
Thursday, January 16, 1975—9:30 a.m.
Conference Room 847
1919 M Street, NW.
Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Introduction of Attendees; Adoption of Agenda.
3. Approval of Minutes.
4. Committee Reports.
5. Status report on "Federal Advisory Committee Act".
6. Discussion on draft papers.
7. Assembly Meeting Report.
8. Reports on other meetings.
9. Summary reports and announcements.
10. New business.
11. Establishment of next meeting date.

To comply with the advance meeting notice requirements of Public Law 92-463, a comparatively long interval of time occurs between publication of this notice and the actual meetings. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend any of the preceding listed meetings should report to the room number given in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for each committee meeting are available at that meeting. Those desiring more specific information may contact either the designated Committee Chairman or the RTCM Secretariat. (Phone: (202) 632-6490)

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final reports are approved by the RTCM

Executive Committee. All RTCM meetings are open to the public.

[FR Doc.74-30313 Filed 12-27-74; 8:45 am]

[Docket Nos. 20179, 20180, File Nos. BPH-8523, BPH-8782; FCC 74R-450]

TRI-COUNTY STEREO, INC. AND MORISON ENTERPRISES, INC. OF POLK COUNTY

Memorandum Opinion and Order Regarding Construction Permit

1. By Order, 39 FR 34103, published September 23, 1974, the Chief of the Broadcast Bureau, acting pursuant to delegated authority, designated the above-captioned applications for hearing. Presently before the Review Board is a petition to enlarge issues, filed November 1, 1974, by Tri-County Stereo, Inc. (Tri-County), requesting addition of site availability and Rule 1.526 (public inspection file) issues against Morison Enterprises, Inc. of Polk County (Morison).¹

2. Tri-County concedes that its petition is late filed,² but, citing The Edgefield-Saluda Radio Co. (WJES), 5 FCC 2d 148, 8 RR 2d 611 (1966), asserts that it has raised "matters of great significance" which warrant evidentiary inquiry on the merits. Tri-County also asserts that "many of the events only recently occurred and petitioner has proceeded with due diligence to file this petition upon learning of them." The Review Board agrees with the Broadcast Bureau that good cause does not exist because Tri-County has not shown that the information relied upon in support of its petition could not have been obtained earlier. However, the petition does raise serious public interest questions. Thus, consistent with our usual practice, we will consider the petition on its merits.

SITE AVAILABILITY ISSUE

3. In support of its request for a transmitter site availability issue, Tri-County submits a letter and affidavit from the president of Ben Hill Griffin, Inc., the owner of the land Morison has specified as its site, which state that his permission for Morison's utilization of the site has been withdrawn. Petitioner, therefore, asserts that the proposed site is unavailable. The Bureau supports addition of the requested issue. Opposing enlargement, Morison contends that addition of such an issue would be premature because it is presently negotiating for a new site, and it intends to file a petition to amend to reflect this purchase shortly.

4. Morison does not dispute that its originally specified site is apparently unavailable and no petition to amend specifying a new site has been acted upon by the Administrative Law Judge. Accordingly, a site availability issue will be

¹ Also before the Review Board are: (a) comments, filed November 14, 1974, by the Broadcast Bureau; (b) opposition, filed November 18, 1974, by Morison; and (c) reply, filed November 22, 1974, by Tri-County.

² The petition was filed approximately three weeks after the time for filing had expired. See section 1.229 of the rules.

added against Morison. See Community Broadcasting Co., Inc., 48 FCC 2d 489, 31 RR 2d 164 (1974).

PUBLIC INSPECTION FILE ISSUE

5. Petitioner, in support of its request for the addition of a Rule 1.526 issue against Morison, alleges that the Morison public file does not contain two pieces of Commission correspondence and two amendments to the Morison application. In support of its allegations, Tri-County attaches the affidavits of W. Bruce Strenth and Francis J. Matranga, each of whom states that he reviewed the Morison file, and that the file contained only the unamended Morison application, dated December 26, 1973. Both the Bureau and Morison oppose the requested issue. Morison submits that it is currently "in substantial compliance with the Commission's Rules" because the omitted documents have either been placed in the file or will be added shortly.

6. The Review Board will add the requested issue. Substantial compliance with Rule 1.526, as suggested by Morison, is not the correct criterion—"an applicant has either complied or not complied." Media, Inc., 22 FCC 2d 875, 876, 18 RR 2d 1175, 1178 (1970). It appears that Morison has not complied with the requirements of Rule 1.526, and it has offered no explanation for its failure to do so. However, in the absence of any indication or allegation of intentional misconduct or prejudice to the parties or to the public, we will add the issue on a comparative basis only. Cf. Edward G. Atsinger, III, 29 FCC 2d 443, 21 RR 2d 1039 (1971).

7. Accordingly, it is ordered, That the petition to enlarge issues, filed November 1, 1974, by Tri-County Stereo, Inc., is granted to the extent indicated herein, and IS DENIED in all other respects; and

8. It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether Morison Enterprises, Inc. of Polk County has reasonable assurance of the transmitter site specified in its application;

(b) To determine whether Morison Enterprises, Inc. of Polk County has complied with Section 1.526 of the Commission's Rules, and, if not, the effect thereof on its comparative qualifications to be a Commission licensee.

9. It is further ordered, That the burdens of proceeding and proof under issue (a) added herein shall be on Morison Enterprises, Inc. of Polk County.

Adopted: December 16, 1974.

Released: December 20, 1974.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.74-30312 Filed 12-27-74; 8:45 am]

FEDERAL ENERGY ADMINISTRATION CONSUMER AFFAIRS AND SPECIAL IMPACT ADVISORY COMMITTEE Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given

that the Consumer Affairs and Special Impact Advisory Committee will meet from 7 p.m. until 9 p.m., Wednesday, January 15, 1975, and reconvene at 9 a.m., Thursday, January 16, 1975, in Room 3400, 12th & Pennsylvania Avenue NW., Washington, D.C.

This Committee was established to provide the Federal Energy Administration with diversified knowledge and experiences possessed by a wide range of highly qualified individuals who have been extensively involved in planning, development, and implementation of programs to remedy the problems of the consumer, the poor, the elderly, and the handicapped persons in rural and urban America.

The Agenda for the meeting is as follows:

1. Oil Pricing Policy Issues—Impact on Consumers.
2. Oil Pricing Regulations.
3. FEA Allocation Program and FEA Compliance Program.
4. Discussion of Coal Price Increases—Consumer Cost vs. Industrial Cost.
5. Progress Report on Resolutions Regarding Emergency Social Programs for this Winter.

The meeting is open to the public; however, space and facilities are limited.

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois Weeks, Advisory Committee Management Office (202) 961-7022 at least 5 days before the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection at the Federal Energy Administration, Washington, D.C.

Issued at Washington, D.C. on December 24, 1974.

ROBERT E. MONTGOMERY, Jr.,
General Counsel.

[FR Doc.74-30334 Filed 12-27-74; 8:45 am]

FEDERAL MARITIME COMMISSION

[INDEPENDENT OCEAN FREIGHT
FORWARDER LICENSE NO. 1056]

BEVON INTERNATIONAL, INC.

Order of Revocation

Bevon International, Inc., 196 East Bay Street, Charleston, South Carolina 29402 voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1056 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) § 7.04(f) (dated 9/15/73);

It is ordered, that Independent Ocean Freight Forwarder License No. 1056 be and is hereby revoked effective December 13, 1974, without prejudice to reapply for a license at a future date.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Bevon International, Inc.

WM. JARREL SMITH, Jr.,
Deputy Managing Director.

[FR Doc.74-30320 Filed 12-27-74; 8:45 am]

[INDEPENDENT OCEAN FREIGHT FOR-
WARDER LICENSE NO. 391]

ERRION COMPANY, INC.

Order of Revocation

Errion Company, Inc., 200 Chestnut Avenue, Bogota, New Jersey 07603 voluntarily surrendered its Independent Ocean Freight Forwarder License No. 391 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) § 7.04(f) (dated 9/15/73);

It is Ordered, that Independent Ocean Freight Forwarder License No. 391 be and is hereby revoked effective December 12, 1974, without prejudice to reapply for a license at a later date.

It is Further Ordered, that a copy of this Order be published in the FEDERAL REGISTER and served upon Errion Company, Inc.

WM. JARRELL SMITH, Jr.,
Deputy Managing Director.

[FR Doc.74-30321 Filed 12-27-74; 8:15 am]

PORT OF OAKLAND AND MARINE TERMINALS CORP.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 19, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with par-

ticularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

J. Kerwin Rooney, Esquire
Port Attorney
Port of Oakland
66 Jack London Square
P.O. Box 2064
Oakland, California 94607

Agreement No. T-2913-1 between the City of Oakland (City) and Marine Terminals Corporation (MTC) amends the basic agreement which provides for the two-year nonexclusive preferential assignment by City of MTC of certain premises in the Port of Oakland, California, for the purpose of docking, unloading and loading vessels. The purpose of the amendment is to delete Parcel Two from the Agreement without any change in compensation and to make other appropriate changes related thereto.

By Order of the Federal Maritime Commission.

Dated: December 20, 1974.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.74-30318 Filed 12-27-74; 8:45 am]

PUERTO RICO TRADES AGREEMENT NO. DC-8, AS AMENDED

Request for Cancellation

Notice of Request for Cancellation of Agreement Filed By:

John Mason, Esq.
Ragan & Mason
The Farragut Building
900 Seventeenth Street, NW.
Washington, D.C. 20006

Agreement No. DC-8, as amended, between Sea-Land Service, Inc., Seatrain Lines, Inc., Transamerican Trailer Transport, Inc., Trailer Marine Transport, Inc. (TMT), and Gulf Puerto Rico Lines, Inc., permits the parties to exchange information relative to cost of service, rates and rationalization of sailings¹ in the trades between United States Atlantic, Gulf and Pacific ports and ports in Puerto Rico. The basic agreement was approved by the Commission on January 17, 1964.

The parties to Agreement No. DC-8 no longer operate in trades between the United States East and Gulf Coasts and Puerto Rico and, therefore, have requested the Commission to issue an order terminating Agreement No. DC-8, as amended, and the rights and obligations of the parties thereunder.

Interested parties desiring to comment on this matter may file such comments with the Secretary, Federal Maritime Commission, Washington, D.C.

¹ TMT chose not to participate in amendment DC-8-3 which permitted agreement on the rationalization of sailings.

20573, on or before January 9, 1975.

A copy of any such statement should also be forwarded to the party filing the request for cancellation of the agreement and the statement should indicate that this has been done.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

Dated: December 23, 1974.

[FR Doc. 74-30319 Filed 12-27-74; 8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-18352, et al.]

CITIES SERVICE OIL CO. ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

DECEMBER 17, 1974.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 6, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and

necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-18352 D 11-29-74	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Natural Gas Pipeline Co. of America, Camrick Unit, Texas and Beaver Counties, Okla.	Uneconomical	
CI73-513 C 11-12-73 ¹	Pacific Lighting Gas Development Co., 720 West Eight St., Los Angeles, Calif. 90017.	Transwestern Pipeline Co., South Vici Field, Dewey County, Okla.	\$ 21.315	14.65
CI75-155 A 9-11-74 ¹	Cities Service Oil Co.	Pacific Lighting Service Co., Federal lease OCS P-1606, offshore Santa Barbara County, Calif.	\$ 60.0	14.73
CI75-326 (G-7000) (G-12487) (C165-820) F 11-18-74	R.S.V. Co., Inc. (successor to Cities Service Oil Co.), P.O. Box 2290, Pikeville, Ky. 41501.	Columbia Gas Transmission Corp., Appalachian Field, Floyd and Pike Counties, Ky.	29.0	14.7
CI75-334 (C160-634) B 11-18-74	Cities Service Oil Co.	United Gas Pipe Line Co., State Tract 83 and State Tract 445, offshore Nueces and San Patricio Counties, Tex.	Non-productive	
CI75-335 (C871-364) B 11-21-74	Edwin M. Jones Oil Co., 304 Milam Bldg., San Antonio, Tex. 78205.	Natural Gas Pipeline Co. of America, Clayton Field, Live Oak and McMullen Counties, Tex.	Depleted	
CI75-336 (C871-51) F 11-21-74	Sun Calvert Co. (successor to Calvert Exploration Co.), P.O. Box 2880, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., South Tilden Field, McMullen County, Tex.	\$ 16.00	14.65
CI75-337 (C873-400) B 11-22-74	Tara Petroleum Corp., 706 Amarillo National Bank Bldg., Amarillo, Tex. 79101.	Kansas-Nebraska Natural Gas Co., Inc., Syracuse Field, Hamilton County, Kans.	Depleted	
CI75-338 E 11-22-74	American Petrofina Co. of Texas (Operator), et al. (successor to Duer Wagner & Co.), P.O. Box 2159, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., Greta Field, Redingo County, Tex.	\$ 25.0 \$ 46.225	14.65 14.65
CI75-339 A 11-22-74	Sun Oil Co., P.O. Box 2880, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., Sorrento Field, Ascension Parish, La.	\$ 33.35	15.025
CI75-341 A 11-22-74	Phacid Oil Co., 2500 First National Bank Bldg., Dallas, Tex. 75283.	Natural Gas Pipeline Co. of America, Franks Northwest Field, Galveston County, Tex.	\$ 43.0	14.73
CI75-342 (CI72-499) B 11-25-74	Texas Pacific Oil Co., Inc., 1700 One Main Place, Dallas, Tex. 75259.	Cities Service Gas Co., Southeast Nash area, Grant County, Okla.	Depleted	
CI75-346 A 11-25-74	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Mountain Fuel Supply Co., Spearhead area, Converse County, Wyo.	\$ 50.0	15.025
CI75-348 F 11-15-74	Union Texas Petroleum, a division of Allied Chemical Corp. (successor to (G)), P.O. Box 2180, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Caprito Field, Ward County, Tex.	\$ 45.9722	14.65
CI75-349 A 11-27-74 ¹¹	Pinto, Inc., 999 The Main Building, Houston, Tex. 77002.	Sea Robin Pipeline Co., Block 270, East Cameron area, south addition, and Block 330, Eugene Island area, south addition, offshore Louisiana.	\$ 44.123	15.025
CI75-350 A 11-27-74 ¹¹	Texas Production Co., 999 The Main Building, Houston, Tex. 77002.	Sea Robin Pipeline Co., Block 270, East Cameron area, south addition, and block 330, Eugene Island area, south addition, offshore Louisiana.	\$ 44.123	15.025
CI75-351 A 11-27-74 ¹¹	Eccc, Inc., 999 The Main Building, Houston, Tex. 77002.	do.	\$ 44.123	15.025
CI75-352 A 11-25-74 ¹¹	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Eugene Island Block 330 Field, offshore Louisiana.	\$ 40.6836	15.025
CI75-353 A 11-27-74	Sun Oil Co., P.O. Box 2880, Dallas, Tex. 75221.	Transcontinental Gas Pipe Line Corp., Live Oak Field, Vermillion Parish, La.	\$ 20.625	15.025
CI75-354 A 11-27-74	Sun Oil Co.	United Gas Pipe Line Co., Abbeville Field, Vermillion Parish, La.	\$ 38.525	15.025
CI75-356 A 11-29-74	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79109.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., Patrick Draw area field, Sweetwater County, Wyo.	\$ 42.7665	14.65

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

- ¹ Being renotified, because by filing of 12-3-74, Applicant now requests a certificate at the rate of 21.315¢ per Mcf established under Opinion No. 586.
- ² Being renotified, because by letter filed 11-15-74, Applicant states its willingness to accept a certificate in accordance with Opinion No. 699.
- ³ Gas well gas only and subject to upward and downward Btu adjustment.
- ⁴ Subject to downward Btu adjustment and includes 0.006¢ per Mcf tax reimbursement.
- ⁵ Rate for gas from wells drilled prior to 1-1-73; subject to downward Btu adjustment.
- ⁶ Rate for gas from wells drilled after 1-1-73; subject to downward Btu adjustment.
- ⁷ Includes 3.85¢ per Mcf tax reimbursement; subject to downward Btu adjustment.
- ⁸ Subject to upward and downward Btu adjustment.
- ⁹ Applicant is willing to accept a certificate in accordance with Opinion No. 699.
- ¹⁰ Atlantic Richfield Company (C168-691), HNG Oil Company (C168-1199), J. N. Gifford (CS71-189), The Midland National Bank, Trustee (CS68-40) and Texas American Oil Corporation (CS67-30).
- ¹¹ Applicant proposes to continue the sale for which a certificate was issued in Docket No. C173-455 within Section 2.75 of the Commission's General Policy and Interpretations, 18 CFR 2.75.
- ¹² Subject to upward and downward Btu adjustment; estimated upward adjustment in 0.262¢ per Mcf.
- ¹³ Applicant proposes to continue the sale for which a certificate was issued in Docket No. C173-454 within Section 2.75 of the Commission's General Policy and Interpretations, 18 CFR 2.75.
- ¹⁴ Applicant proposes to continue the sale for which a certificate was issued in Docket No. C173-456 within Section 2.75 of the Commission's General Policy and Interpretations, 18 CFR 2.75.
- ¹⁵ Applicant states that it has committed and will sell 75% of its reserves to Tennessee, and will retain 25% for its own use after transportation onshore by Tennessee under other arrangements to be made later.
- ¹⁶ Includes 4.8023¢ per Mcf upward Btu adjustment.
- ¹⁷ Subject to downward Btu adjustment.
- ¹⁸ Includes 2.775¢ per Mcf tax reimbursement.
- ¹⁹ Subject to upward and downward Btu adjustment and subject to a 1.0¢ per Mcf adjustment for gathering.

[FR Doc. 74-30038 Filed 12-27-74; 8:45 am]

[Docket No. RI75-76]

EXXON CORP.**Determination on Rate Changes¹****DECEMBER 18, 1974.**

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

¹ Does not consolidate for hearing or dispose of the several matters herein.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

Appendix A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf ²		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI75-76	Exxon Corp.	357	⁴²	Columbia Gas Transmission Corp. (Garden City <i>et al.</i> Fields, Vermillion Parishes) (Onshore and Offshore Southern Louisiana).	(¹⁹)	11-18-74			11-19-74		
			⁴³	do.	(¹¹)	11-18-74		1-22-75	24.7375	26.9875	RI75-46
						11-18-74		1-22-75	24.7375	31.1126	RI75-46
						11-18-74		11-19-74	24.7375	51.47	RI75-46
						11-18-74		1-22-75	20.625	22.875	RI75-46
						11-18-74		1-22-75	20.625	28.0	RI75-46
						11-18-74		11-19-74	20.625	46.2	RI75-46

^{*} Unless otherwise stated, the pressure base is 15.025 lb/in²a.

¹ Contract agreement dated Oct. 28, 1974.

² Onshore gas.

³ Offshore gas.

⁴ Subject to adjustment with respect to supplemental gas.

⁵ The weighted average prices inclusive of price adjustment factors is 27.3766 cents (onshore) and 23.0203 cents (offshore).

⁶ Flowing gas. Gas from reservoirs discovered prior to Oct. 1, 1968.

⁷ New gas. Gas that qualifies under Opinion No. 567, i.e., from reservoirs discovered from Oct. 1, 1968 to Jan. 1, 1973.

⁸ Includes 1.0 cent transportation allowance for offshore gas delivered onshore.

⁹ Gas qualifying for national rate. Reflects rate prior to issuance of Opinion No. 699-H.

¹⁰ Increase to area rate established in Opinion No. 598 and national rate established in Opinion No. 699.

¹¹ No increase in annual revenues from the underlying rates reflected in the filing.

¹² Includes documents showing the reservoirs which were discovered between Oct. 1, 1968, and Jan. 1, 1973, and documents prior to Jan. 31, 1975.

The proposed rates do not exceed the applicable ceiling rates established by this Commission. There is a question, however, as to whether Exxon is entitled to amend its basic contract, as it has done in its October 28, 1974, agreement, in light of the permanent certificate issued to it on November 15, 1963, in Docket No. C164-5, 30 FPC 1297. Since Exxon's proposed increases are based on the subject contract amendment, we shall suspend the use of the proposed increases as well as the contract amendment for one day from the dates they would otherwise become effective, pending resolution of the issue presented here.

Any action herein is expressly subject to the condition that it is without prejudice to the requirements of Section 7 of the Natural Gas Act.

[FR Doc. 74-30238 Filed 12-27-74; 8:45 am]

[Docket No. E-9117]

MONTAUP ELECTRIC CO.**Order Rejecting Proposed Change in Rate, and Setting Matters for Hearing****DECEMBER 18, 1974.**

On November 18, 1974, Montaup Electric Company (Montaup) submitted for

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter II], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and section 154.102 of the Regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL]

KENNETH F. PLUMB,
Secretary.

filing a proposed fuel adjustment clause as a change in rate applicable to sales of capacity and energy to the City of Taunton, Massachusetts (Taunton). The proposed rate schedule¹ would apply to sales pursuant to Section 5.2—*Scheduled Purchase Capacity*—of the July 31, 1970 Interconnection Agreement (FPC No. 15) between Montaup and Taunton. Montaup requests that the new rate be effective December 19, 1974, for a term not to

¹ Supplement No. 2 to FPC No. 15 (Scheduled Purchase Capacity).

extend beyond the date of regular operation of Taunton's Cleary Unit 9 (hereafter referred to as Unit 9).

Notice of the proposed rate increase was issued December 4, 1974 with responses due on or before December 17, 1974. On that later date, December 17, Taunton filed a Protest, Petition to Intervene and Motion to Reject the filing (Petition). Although the letter transmitting Montaup's filing states that a copy thereof was sent to Taunton on November 18, 1974 (as required by § 35.3 (a) of the Commission's regulations under the Federal Power Act), in its Petition Taunton maintains that it had no notice whatever of the filing prior to receipt of the Commission's December 4, 1974 Notice.

Montaup is presently providing service to Taunton under Section 5.1—*Interim Capacity Purchase*—of the July 31, 1970 Interconnection Agreement. The *Interim Capacity Purchase* is provided from Montaup's Somerset Unit No. 6 at the rate \$2.10 per kilowatt-month, plus 4.4 mills per kilowatt-hour for the first 300 kilowatt-hours per month per kilowatt of demand and 3.8 mills per kilowatt-hour for additional kilowatt-hours per month, as set forth in Appendix A to the Interconnection Agreement. Under the proposed rate change, service would be billed at the rate for the *Interim Capacity Purchase* set out in Appendix A, with the exception that the following fuel adjustment clause would be added:

For any month in which the alongside cost of fuel at the Somerset Plant of Montaup Electric Company is greater or less than 42.64¢ per million British Thermal Units (BTU), the energy charge as set forth in Appendix A will be increased or decreased respectively by 98.875/10,000 mills (\$0.0000988) per kilowatt-hours delivered for each mill of excess or deficit from the 42.64¢ base.

Data submitted by Montaup indicate that under the proposed rate increase, revenues collected during the twelve-month period ending December 31, 1975 would be \$1,528,560. That is more than twice the revenues that would be received during the same period if the present rate were applied, \$734,160.

In analyzing the proposed filing, it is necessary to consider several provisions in the Interconnection Agreement. In pertinent part Section 7.1 states:

TAUNTON shall proceed to design, construct and install on its own system (sic), at its own expense and with a target date for regular operation of July 1, 1973, a new unit of approximately 100 megawatts capacity, capable of cycling operation, to be known as UNIT 9.

Section 7.2 obligates Montaup to purchase that portion of Unit 9's capacity not required by Taunton to meet its peak load. As set forth in Sections 2.2 and 5.1—*Interim Capacity Purchase*—during "the period August 1, 1969, through June 30, 1973, or until regular operation of Unit 9, whichever is later" (emphasis added), Montaup will purchase capacity in the amounts and at the rate set forth in Exhibit A to the Interconnection Agreement. The rate remains constant during the period of *Interim Capacity Purchase*,

and does not contain a fuel adjustment clause. The quantity sold was initially, as of August 1, 1969, 1600 kw and reached a level of 13,000 kw on November 1, 1972.

After the period of *Interim Capacity Purchase* is at an end, Section 5.2—*Scheduled Purchase Capacity*—becomes operative. In the latter situation Montaup will make available to Taunton such capacity, in excess of Montaup's estimated peak load, which Montaup has or can procure from another electric utility. Unless otherwise agreed, the rate for *Scheduled Purchase Capacity* "shall be at the seller's (Montaup's) costs, including, when applicable, the cost of capital or fair return."

As described below, Montaup asserts that the period for service under Section 5.1—*Interim Capacity Purchase* and the rate applicable thereto, terminates as of December 19, 1974. Montaup proposes to continue service pursuant to Section 5.2—*Scheduled Purchase Capacity*—at 13,000 kw. As indicated on Sheets 2 and 3 of the proposed filing, the rate, terms and conditions applicable to *Scheduled Purchase Capacity* under Section 5.2 are identical to those for *Interim Capacity Purchase* under Section 5.1 with the exception of the proposed fuel adjustment clause.

The instant filing is premised upon Montaup's argument that the Interconnection Agreement contemplated that the period for *Interim Capacity Purchase* would not continue more than a reasonable period of time beyond the July 1, 1973 target date for completion of Taunton's Unit 9. Montaup suggests that the effective date of the proposed rate change, December 19, 1974, marks the end of that "reasonable further period". In support of its position Montaup states that although 16 months have passed since Taunton's Unit 9 was to commence regular operation, "construction of the unit is not complete, and Montaup has not been able to obtain any assurance from Taunton as to when regular operation will commence". Montaup also notes that its fuel costs have been "skyrocketing" and that the monthly "cost for fuel at Unit 6 (Somerset) for energy sold to Taunton exceeds its (Montaup's) energy revenues from the sale by approximately \$120,000".

Taunton counters that operation of Unit 9 has been impeded due to labor strikes, late delivery of necessary parts, and regulatory lag due to a variety of environmental matters. Taunton characterizes as "nonsense" Montaup's suggestion that Unit 9 has been delayed because of the favorable rate for *Interim Capacity Purchase* under Section 5.1 of the Interconnection Agreement. On the contrary, Taunton asserts that this delay is injurious to it due to mounting financing costs and increases in construction costs.

Taunton maintains that Sections 5.1 and 2.2 of the Interconnection Agreement are clear and explicit in stating that the rate for *Interim Capacity Purchase*

chase as set forth in Appendix A will remain in effect until Taunton's Unit 9 is operational. Taunton also points out that Section 1.1 of the Interconnection Agreement indicates that even if construction of Unit 9 had not begun prior to June 30, 1973, the contract would remain in full force and effect. It is difficult to reconcile Montaup's argument that the parties did not intend that the rate in Appendix A would remain in effect for more than 16 months beyond the July 1, 1973 target date for operation of Unit 9, with the fact that the parties apparently contemplated that construction of the 100 mw unit might not even begin until June 30, 1973.

As previously noted the rate set forth for service under Section 5.1—*Interim Capacity Purchase*—commenced on August 1, 1969 and was to continue through June 30, 1973, or until regular operation of Taunton's Unit 9, whichever was later. The language of the contract is clear: the rate will continue in effect until Taunton's Unit 9 becomes operational, and the contract's term is fixed to that event. While the language of the contract might lead to inequitable results, during the term of the contract Montaup cannot unilaterally file for a change in rate, "F.P.C. v. Sierra Pacific Power Co.", 350 U.S. 348 (1956) and "United Gas Pipe Line Co. vs. Mobile Gas Service Corp.", 350 U.S. 332 (1956).

Montaup's instant submittal, tendered as a change in rate, is rejected as such. However, we will treat it as a complaint or petition for relief pursuant to section 206 of the Federal Power Act, and set for hearing the question of whether the present rate for service to Taunton is inconsistent with the public interest.

The Commission finds

(1) It is necessary and appropriate in carrying out its responsibilities under the Federal Power Act that the Commission reject Montaup's proposed unilateral rate increase to Taunton, and set for hearing the question of whether the presently effective rate is inconsistent with the public interest.

(2) It appears that Taunton's interests, which are not adequately represented by existing parties, may be directly affected by the Commission's action in this proceeding, and accordingly, Taunton's intervention would be in the public interest.

The Commission orders

(A) Montaup Electric Company's proposed change in rate, described herein, for service to the City of Taunton, Massachusetts, is hereby rejected.

(B) The City of Taunton, Massachusetts is hereby permitted to intervene in this proceeding, subject to the Commission's Rules and Regulations. Provided, however, that such intervention shall not be construed as recognition by the Commission that the City of Taunton might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Pursuant to the authority of the Federal Power Act, particularly sections

* See page 2 of the letter transmitting the proposed rate schedule.

206, 308 and 309 thereof, and the Commission's Rules and Regulations, a public hearing shall be held commencing on April 15, 1975, in a hearing room of the Federal Power Commission, Washington, D.C., to determine whether the presently effective rate for electric service from Montaup Electric Company to the City of Taunton, Massachusetts, as described herein, is inconsistent with the public interest.

(D) On or before March 4, 1975, the intervenor, City of Taunton, Massachusetts shall serve its prepared testimony and exhibits in this proceeding. The prepared testimony and exhibits of the Commission Staff shall be served on or before March 13, 1975. Any rebuttal evidence by Montaup Electric Company shall be served on or before April 1, 1975.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-30331 Filed 12-27-74; 8:45 am]

PLANNING RESEARCH CORP.

Notice To Show Cause

DECEMBER 23, 1974.

On November 5, 1974, the Associated Press (AP) filed a formal request under the Freedom of Information Act, 5 U.S.C. 552, for disclosure of the contract dated June 29, 1974, between the Federal Power Commission and Planning Research Corporation (PRC) announced by the Commission on July 11, 1974, or in the alternative, if certain portions of the contract are exempted from disclosure by the provisions of the Act, release of those portions which are not so exempted. The AP request of November 5, 1974, was submitted and considered by the Commission on November 6, 1974. In accordance with 28 CFR 50.9, the Commission directed that the matter be reviewed by the U.S. Department of Justice, and by November 22, 1974, all of the materials required for such review had been submitted to the Justice Department.

On December 4, 1974, the Justice Department responded to the Commission's request by recommending as a basis for making a determination as to the material which should be publicly disclosed and that which should be withheld from public disclosure, the following criteria:

(a) From the entire contract, the Commission should extract the "essence of the contract"; that is, all of the provisions which, upon the execution of the contract, create a contract obligation on the part of PRC (failure of performance of which would constitute contract default). These provisions should be made available to the requester (AP).

(b) From the remainder of the contract, delete all material which is exempt from disclosure as constituting trade secrets, and commercial or financial information obtained from a person which is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b) (4).¹

¹ 5 U.S.C. 552(b) (4) exempts from the disclosure requirements of the Act, "Trade secrets and commercial or financial information obtained from a person and privileged or confidential."

The material extracted under (a) above, and whatever remains following the deletions as described in (b) above should be released to the AP, as well as to any other interested parties upon request.

Employing these standards, the Commission Staff identified that material which it considers to be exempt from disclosure under the provisions of the Act. Because value judgments are involved in making such determination, the Commission requested the Justice Department to review Staff's application of the aforementioned criteria in determining that certain portions of the contract are exempt from public disclosure. The Justice Department has advised that it would not review Staff's determinations.

Accordingly, the Commission has concluded that the fairest method of determining the validity of Staff's determinations relating to the material to be disclosed or to be withheld from public disclosure is to afford PRC and any other interested party an opportunity to show cause why the entire contract should not be released or, in the alternative, why it should not be released except for those portions thereof which are determined to be exempt from the disclosure requirements of the Freedom of Information Act, unless otherwise required to be kept confidential by Federal procurement regulations, 41 CFR 1-3.103(b).²

Attached to this notice as an appendix³ is a list of the portions of the contract which have been determined by the FPC Staff to be matters which are exempt from the disclosure requirements of the Freedom of Information Act.

We recognize the need for maintaining the delicate balance between the competing interests of the public's right to know and the protection of private interest and property rights. Our regulations (18 CFR 1.36) implementing the provisions of the Freedom of Information Act, in our opinion, achieve a fair balance of these opposing interests. Section 1.36 (b) makes the Commission's public records available for inspection and copying in the public reference room maintained by the Office of Public Information. With relatively few exceptions [18 CFR 1.36(c) (14)], virtually all records of the Commission are available to the public. Exemption 4 of the Freedom of Information Act is implemented by the Commission's regulations [18 CFR 1.36 (c) (14) (iv)] which exclude from public disclosure:

² Section 1-3.103(b) of the Federal Procurement Regulations promulgated by the General Services Administration provides: "Promptly after making awards in any procurement in excess of \$10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other offeror."

³ Appendix filed as part of original document.

"Trade secrets and commercial or financial information obtained from a person and privileged or confidential."

On the basis of the foregoing statutory and regulatory requirements and provisions, the FPC Staff has determined that the material identified in the appendix hereto falls within the scope of section 552(b) (4) of the Freedom of Information Act exemption and is otherwise required to be withheld from public disclosure by the Federal procurement regulations, 41 CFR 1-3.103(b).

It is the intent of this Commission to grant all lawful requests for access to its records consistent with the provisions of the Freedom of Information Act, applicable Federal Procurement Regulations, and the terms of the Commission's own rules and regulations, without impairing legitimate proprietary interests. A full and open hearing will afford the opportunity to all parties to present relevant evidence and argument in support of their respective positions so as to enable the Commission to resolve all legitimate areas of conflict between public and private interests compatibly with the overall public interest.

The Commission finds:

It is in the public interest and in accordance with due process to afford PRC, AP and any other interested parties an opportunity to show cause why all or any portion of the contract should not be disclosed to the public.

The Commission orders:

(A) PRC, AP and all other interested parties are invited to show cause why the entire contract should not be released or, in the alternative, why it should not be released except for those portions thereof which are determined to be exempt from the disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552(b) (4), unless otherwise required to be kept confidential by Federal procurement regulations, 41 CFR 1-3.103(b).

(B) An Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose [See Delegation of Authority, 18 CFR 3.5(d)], shall preside at a hearing under Part 1, Chapter 1 of our rules of practice and procedure, such hearing to commence January 2, 1975, at 10:00 a.m. The Administrative Law Judge shall prescribe relevant procedural matters not herein provided.

(C) Any examination by the Administrative Law Judge of portions of the contract alleged by a party to be exempt from disclosure shall be in camera, and these portions shall not be reproduced in the transcript of the hearing that may be held.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-30332 Filed 12-27-74; 8:45 am]

NATIONAL GAS SURVEY

Determination and Certification With Respect to Renewal of Certain Committees

DECEMBER 23, 1974.

The Chairman of the Federal Power Commission has determined that renewal of the terms of the National Gas Survey's Executive Advisory Committee, Coordinating Committee, Coordinating Task Force, Technical Advisory Committee—Supply, Technical Advisory Committee—Transmission, and Technical Advisory Committee—Distribution, from and after December 31, 1974, to and including a date not later than December 31, 1975, is necessary in the public interest in connection with the performance of duties imposed by law upon the Commission.

This notice is published pursuant to Commission General Order No. 464, issued December 19, 1972, 38 FR 1083, as amended by Commission General Order No. 464-A, issued August 2, 1974, paragraph 5(e) and authorities referred to therein, 39 FR 28929. See also Office of Management and Budget, Advisory Committee Management, Circular A-63 Revised, March 27, 1974, 39 FR 12389, as amended July 19, 1974.

The four advisory committees to be renewed were established by Commission orders issued April 6, 1971: Order Establishing National Gas Survey Executive Advisory Committee and Designating Its Membership and Chairmanship, 36 FR 6922; Order Establishing National Gas Survey Technical Advisory Committees and Designating Initial Membership, 36 FR 6922. The Coordinating Committee to be renewed was initially established by Commission order issued May 10, 1971, Order Establishing National Gas Survey Coordinating Committee and Designating Its Membership and Chairmanship, 36 FR 8910. The Coordinating Task Force was initially established by Commission Order issued December 21, 1971, Order Establishing Technical Advisory and Coordinating Committee Task Forces and Designating Membership, 36 FR 25183. The aforementioned orders all referred to an earlier order of the Commission issued February 23, 1971, Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, 36 FR 3851.

Each of the foregoing orders have been amended by subsequent Commission orders of April 25, 1972, 37 FR 8578, Order Amending National Gas Survey Orders Issued February 23, 1971, and April 6, 1971; of June 27, 1972, 37 FR 13306, Amending National Gas Survey Orders; and of December 19, 1972, 37 FR 28658, Amending National Gas Survey Orders.

The terms of the four advisory committees were extended by Commission order issued December 28, 1973, Order Renewing National Gas Survey Technical Advisory Committees and Coordinating Committees, 39 FR 1540. The term of the Coordinating Task Force was extended by Commission order issued December 28, 1973, Order Renewing Na-

tional Gas Survey Technical Advisory and Coordinating Committee Task Forces, 39 FR 1482.

The aforementioned committees are presently scheduled to expire on December 31, 1974. As renewed, the subject committees and task force would function as set forth in the aforementioned orders for the additional period of time set forth above—from and after December 31, 1974, to and including a date not later than December 31, 1975.

It is intended that these committees will provide a framework for a continuing National Gas Survey and that from time to time the Commission shall request the establishment of task forces subordinate to the technical advisory committees. The persistent and critical problems facing the nation's gas industry require continuation of the Survey's work. The purpose of the proposed committees will be to determine in each segment of the gas industry (supply, transmission and distribution) the conservation and energy management options available and to analyze and evaluate the potential costs and benefits of each and to suggest strategies for implementing these options. These committees are also expected to consider the matter of environmental trade-offs.

The Office of Management and Budget, Advisory Committee Management, has ascertained that renewal of the subject committees as set forth above is in accord with the requirements of the Federal Advisory Committee Act, 86 Stat. 770. Renewal of these committees shall be reflected in appropriate Commission orders to be issued after December 26, 1974.

JOHN N. NASSIKAS,
Chairman.

[FR Doc. 74-30432 Filed 12-27-74; 8:45 am]

[Docket No. RP75-44-1]

**ALABAMA TENNESSEE NATURAL GAS CO.
AND NORTH ALABAMA GAS DISTRICT
GLASSROCK PRODUCTS CORP.**

Order Granting Interim Extraordinary Relief and Setting Matter for Formal Hearing and Prescribing Procedures

DECEMBER 26, 1974.

North Alabama Gas District (North Alabama) on behalf of Glassrock Products Corporation (Glassrock) requests emergency relief in order to maintain production and forestall a plant closure. Petitioner, a customer of Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), requires up to 120 Mcf per day in order to supply Glassrock's needs for process use in its manufacture of electrical components. A direct fired small rotary kiln is utilized in the operation. According to the company, fuel oil can not be utilized because of its sulfur content which contaminates the product. An allocation of propane has now been requested, but because of the assurance by Alabama-Tennessee of an adequate gas supply a number one priority for propane had not been pursued previously. The plant is currently shut down with 28 employees laid off.

Alabama-Tennessee is currently being curtailed by its sole supplier, Tennessee Gas Pipeline Company, and North Alabama advises that it has been reduced to only 42 percent of its requirements adequate to serve approximately two-thirds of its Priority 2 service. In view of this North Alabama alleges that it cannot offer any relief unilaterally from within its system.

We shall grant emergency relief for a period of up to 30 days in which time Glassrock may be able to secure an alternate fuel or in the event that relief is required beyond this period Petitioner may supplement the request for additional relief pursuant to the requirements of Order No. 467-C. Such grant shall be subject to payback and upon the condition that such relief will not jeopardize service to residential or small commercial customers served indirectly from the Alabama-Tennessee system. Additionally, we shall set this matter for an expedited formal hearing.

The Commission finds:

That Alabama-Tennessee should be authorized and directed to deliver to North Alabama for the account of Glassrock Products Corporation, 120 Mcf per day for 30 days subject to the conditions herein ordered and that this matter be set for expedited formal hearing as hereinafter ordered.

The Commission orders:

(A) Alabama-Tennessee is hereby authorized and directed subject to payback to deliver to North Alabama for the account of Glassrock Products Corporation, 120 Mcf per day for 30 days, and upon condition that such relief will not jeopardize service to residential and small commercial customers served indirectly from the Alabama-Tennessee system.

(B) Pursuant to sections 4, 15, and 16 of the Natural Gas Act, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act, a public hearing will be held at 10:00 a.m. e.s.t. on December 30, 1974, in a hearing room at the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 concerning the request for extraordinary relief filed by North Alabama.

(C) At the hearing established by Paragraph (B) above, North Alabama shall present evidence in the form of testimony and exhibits showing, inter alia, the requirements set forth in Order No. 467-C, 18 CFR 2.78(a) (i) particularly subparagraph (k) thereof.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for this purpose [see, Delegation of Authority, 18 CFR 3.5 (d)] shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(E) All parties desiring to intervene shall file their notices and petitions in accordance with the Commission's Rules of Practice and Procedure particularly § 1.18 on or before December 30, 1974, and the Presiding Administrative Law Judge shall allow all such petitioners to

participate conditionally in the hearing herein ordered.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-30467 Filed 12-27-74; 10:18 am]

[Docket No. RP75-45]

TENNESSEE GAS PIPELINE CO.

Order Instituting Investigation and Order To Show Cause, Setting Hearing, and Establishing Procedures

DECEMBER 24, 1974.

With the advent of a natural gas supply shortage on interstate pipeline systems, the Commission has requested, among other things, jurisdictional pipelines to file semi-annual projections of curtailment levels anticipated for forthcoming winter heating seasons. In compliance with our requirements, Tennessee Gas Pipeline Company (Tennessee) filed its Form 16 reflecting projected curtailment for the 1974-75 season to be at an approximate level of 6%. Recent submittals in the form of petitions for relief and complaints indicate a system-wide curtailment in excess of twice the amount projected by Tennessee. This sharp and inordinate increase compels us to institute an immediate investigation as to the severity and causes on the Tennessee system inclusive of the allegations set forth in the Knoxville complaint, supra:

Said curtailment is in addition to an earlier curtailment invoked by Tennessee in October, 1974, which was allegedly based upon losses in production sustained by the hurricane Carmen, a failure to bring production on the line which had earlier been relied upon by Tennessee, and a drop in pressures in wells presently attached. [page 2] * * *

Such hasty, ill-considered action by Tennessee has led to numerous assertions being made that this action is a "power play" to accomplish a result of (a) increasing the chances of de-regulation of natural gas in Congress, (b) preventing the passage of a depletion allowance restriction by Congress, (c) to aid Tennessee in its rate case now pending before this Commission to prove that its depreciation allowance should be substantially increased, and numerous other similar assertions and charges [page 7].

The Commission finds:

It is necessary and proper to institute a formal investigation and proceeding pursuant to Section 14 of the Natural Gas Act into the matters set forth above and for the procedures hereinafter ordered.

The Commission orders:

(A) Pursuant to sections 14, 15, and 16 of the Natural Gas Act and the Commission Rules and Regulations promulgated thereunder, the Commission institutes an investigation of the circumstances for the increased curtailment, beyond the Form 16 projections, on the system of Tennessee Gas Pipeline

¹ See for example complaint filed on December 23, 1974, by Knoxville Utilities Board, et al. in Docket No. RP75-43.

Company and a determination as to the current projections of curtailment for said system.

(B) Tennessee Gas Pipeline Company is hereby ordered to appear at a formal hearing to convene on January 7, 1975, at 10:00 a.m. e.s.t. in a hearing room of the Federal Power Commission, 825 North Capitol, NE., Washington, D.C., 20426, and submit testimony and documentary evidence in explanation of the causes for the increased curtailment beyond the levels projected in the Form 16 filing. Such evidence shall include, inter alia, the adequacy of the gas reserves held or controlled by it or dedicated to it, the change, if any, in the level of production from such reserves, the effect on deliverability of gas from reserves affected by adverse weather such as hurricanes, tornadoes, etc., and the actions taken to fully reactivate the production from those reserves. In addition, Tennessee shall show its storage inventories (inclusive of that stored by others), injections and withdrawals, for the immediate past 12-month period on a monthly basis.

(C) Immediately following Tennessee's presentation, the parties, to the extent that they are able, shall commence cross-examination of Tennessee's witnesses. The Presiding Administrative Law Judge may permit, if needed, a short recess to permit the parties to prepare for such cross-examination.

(D) The Presiding Administrative Law Judge designated by the Chief Administrative Law Judge for that purpose [see Delegation of Authority, 18 CFR section 3.5(d)] shall prescribe such further procedures as may be warranted to expedite consideration of the matters involved in this investigation.

(E) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, on or before January 3, 1975, in accordance with the Commission's Rules of Practice and Procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.74-30466 Filed 12-27-74; 10:18 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals; Federal Energy Administration

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on December 23, 1974. See 44 U.S.C. 3512 (c) & (d). The purpose of publishing this list in the Federal Register is to inform the public of such receipt.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if

applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEA form are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed form, comments must be received on or before January 15, 1975, and should be addressed to Mr. Monte Canfield, Jr., Director, Office of Special Programs, United States General Accounting Office, 425 I Street, NW., Washington, D.C. 20548.

Further information about the items on this list may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

FEDERAL ENERGY ADMINISTRATION

Request for clearance of a single time FEA Form-P308-S-O entitled: Historical Survey of Propane, Distillate Fuel Oil and Residual Fuel Oil Sales to Ultimate Consumers. This form will be sent to the parent organization of all retailers of propane, distillate fuel oil and residual fuel oil, and it will request volume information on a monthly basis over the period January 1972 through December 1974. An annual percentage estimate by end use categories for 1973 is requested as well as quarterly percentage estimates for 1974. There are 15,000 potential respondents; respondent burden is estimated to be 24 man-hours.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[FR Doc.74-30356 Filed 12-27-74; 8:45 am]

GENERAL SERVICES ADMINISTRATION

FEDERAL PROPERTY MANAGEMENT REGULATIONS

[TEMPORARY REGULATION E-36]

Supplement to the Supply Activity Report

1. *Purpose.* This regulation requires agencies to submit a supplement to the Supply Activity Report which will enable GSA to more effectively perform its role as a major procurement source for Federal executive agencies.

2. *Effective date.* This regulation is effective December 30, 1974.

3. *Expiration date.* This regulation expires June 30, 1976, unless sooner revised or superseded.

4. *Applicability.* The provisions of this regulation apply to all executive agencies except the Department of Defense.

5. *Background.* Data on the types of items purchased, the source of the items, and the funds expended are required to provide a means for GSA to evaluate the effectiveness of its procurement program in terms of supply responsiveness to Federal agency needs. The data will be screened to determine the extent to which agency requirements are being met and to effect modifications in the supply support program to achieve further improvements.

ARTHUR F. SAMPSON,
Administrator of General Services.

[FR Doc.74-30354 Filed 12-27-74;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 12/23/74 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration:

Factors affecting training and employment demands for physician's assistants. Part one: Factors affecting demand for training, BHRC 1114, other (see SF-83), physician's assistants, Strasser, A., 395-3880.

National Institute of Education:

Evaluation design for interpersonal influence, NIE 85, on occasion, public school teachers and administrators, human resources division, 395-3532.

Office of Education:

Vocational education curriculum specialist project—Washington State University, OE 389, 389-1, single-time, vocational educators, Planchon, P., 395-3898.

Office of the Secretary:

Nutrition site survey questionnaire, aging, CS-56-74, single-time, site directors of nutrition programs, Reese, B. F., 395-5630.

Field data collection instruments regarding exploratory study of women in health professions schools, CS-58-74, single-time health professions schools administrators, & faculty, Collins, L., 395-3756.

Health Resources Administration: A study of State policies for temporary and limited licensure of foreign medical graduates, BHRS 1126, single-time, hospitals and professional associations, human resources division, 395-3532.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration: Request for partial payment, HUD 489.1, on occasion, State and local governments in disaster areas, community & veterans affairs division, 395-3532.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration: Construction foreman/supervisor survey, OSHA 25, single-time, foreman/supervisors in construction firms, Ellett, C.A., 395-6172.

Construction safety authorities survey, OSHA 26, single-time, authorities/industry leaders in construction safety, Ellett, C.A., 395-6172.

DEPARTMENT OF THE INTERIOR

Bureau of Mines: Gold, 6-0930-CA, quarterly, refinery producers and consumers of gold, Weiner, N., 395-4890.

Small Business Administration: Evaluation of Small Business Loan Program: Financial institution questionnaire, single-time, commercial banks with 10 or more 7(A) loans, Economics & General Government Division, 395-3451.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration: Universe IV component of drug abuse prevention, resource units (CAPRU), NIDA 1206, semi-annually, drug abuse prevention resource units, Reese, B.F., 395-5630.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration: Request for advance of funds, HUD 489, on occasion, State and local governments in disaster areas, Community & Veterans Affairs Division, 395-3532.

PHILLIP D. LARSEN,

Budget and Management Officer.

[FR Doc.74-30399 Filed 12-27-74;8:45 am]

OFFICE OF TELECOMMUNICATIONS POLICY

FREQUENCY MANAGEMENT ADVISORY COUNCIL AND ELECTROMAGNETIC RADIATION MANAGEMENT ADVISORY COUNCIL

Notice of Renewal

The Office of Telecommunications Policy has two advisory committees, the Frequency Management Advisory Council (FMAC) and the Electromagnetic Radiation Management Advisory Council (ERMAC). Each is scheduled to terminate December 31, 1974.

The Frequency Management Advisory Council was established July 19, 1965. Its purpose is to advise the Director of the Office of Telecommunications Policy on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The scope of FMAC's activities are advisory, and include the review, as appropriate, of recommendations of the Interdepartment Radio Advisory Committee (IRAC), the review of the progress of electromagnetic compatibility programs, and the development of proposed United States positions on spectrum matters

with respect to International Telecommunication Union (ITU) Conferences.

The Electromagnetic Radiation Management Advisory Council (ERMAC) was established on December 11, 1968, to advise and make recommendations to the Director of Telecommunications Policy on side effects and the adequacy of control of electromagnetic radiation arising from communication activities. It reviews, evaluates and recommends potential measures to investigate and mitigate possible undesirable effects on the environment, biological and physical, including equipment and materials, and develops recommended policy guidance in these areas. Effects in any region of the spectrum are analyzed from electrostatic and constant magnetic fields through the radio frequency spectrum to the optical spectrum, including coherent optical radiation (lasers).

The Council is comprised of experts in various related disciplines, including electronics, engineering, physics, and the biological and medical sciences and has observers from cognizant Government agencies and departments.

I have reviewed the activities and accomplishments of these committees, and find that each has provided needed and useful advice of continuing benefit to the Office of Telecommunications Policy. As a result of my review I determine, pursuant to section 7(a) of OMB Circular No. A-63, Revised, that it is in the public interest for each committee to be renewed for a two-year period, and they are hereby renewed.

JOHN EGER,
Acting Director.

DECEMBER 24, 1974.

[FR Doc.74-30345 Filed 12-27-74;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE ON THE IMPLEMENTATION OF A CENTRAL MARKET SYSTEM

Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I 10(a), that the Securities and Exchange Commission Advisory Committee on the Implementation of a Central Market System will conduct open meetings on January 9 and 10, 1975 at 500 North Capitol Street, Washington, D.C. 20549 in Room 776 beginning at 9:00 a.m. The summarized agenda for the meetings is as follows:

1. Review of written comments received in response to the Committee's Preliminary Statement (Securities Exchange Act Release No. 11131, December 11, 1974).
2. Review of statements presented before hearings of the Securities and Exchange Commission regarding its proposed Rules 19b-3 and 10b-22 under the Securities Exchange Act of 1934.
3. Oral presentations in response to the Committee's Preliminary Statement by those

members of the public having previously requested in writing to the Executive Secretary of the Committee the opportunity to make such presentations.

4. Discussion of plans for future meetings. Further information may be obtained by writing: Andrew P. Steffan, Executive Secretary of the Committee and Director, Office of Policy Planning, United States Securities and Exchange Commission, Washington, D.C. 20549.

Dated: December 24, 1974.

[SEAL] GEORGE A. FITZSIMMONS,
Advisory Committee
Management Officer.

[FR Doc. 74-30395 Filed 12-27-74; 8:45 am]

[File No. 81-159]

ACCURED EQUITIES, INC.

Application and Opportunity for Hearing

DECEMBER 17, 1974.

Notice is hereby given that Accrued Equities, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") that Applicant be granted an exemption from the provisions of section 15(d) of the 1934 Act.

Section 15(d) of the 1934 Act provides that each issuer which shall file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 of the 1934 Act in respect of a security registered pursuant to Section 12 of the 1934 Act.

Section 12(h) of the 1934 Act empowers the Commission to exempt, in whole, or in part, any issuer or class of issuers from the provisions of Section 15(d), if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The Applicant states, in part:

1. Applicant, a New York corporation formed on September 21, 1954, is a Scotch whiskey broker.

2. During 1971, Applicant issued units in the aggregate amount of \$1 million consisting of various ages and gallonages of Scotch whiskey together with certain ancillary services intended for sale to United States investors, pursuant to an effective registration statement (File No. 2-39369).

3. The ancillary services performed by Applicant consist of furnishing market letters, advising the investor about the availability of insurance, advising the investor as to the relative merits in investing in various ages and types of malts and grains, and advising the investor as to the market conditions in resales.

4. Applicant has no obligations or commitments to repurchase the Scotch whiskey.

In the absence of an exemption, Applicant is required to file certain periodic reports with the Commission pursuant to section 15(d) of the 1934 Act.

Applicant argues that the exemption order requested by it is appropriate in view of the fact that the requirements of section 15(d) of the 1934 Act were not intended for a company where no class of person, excepting the principal, has a claim upon the company's assets or income and that there is no knowledge on the part of the Applicant as to whether or not there is any definable class of security holders exceeding 300 persons.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than January 13, 1975 may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549 and should state briefly the nature of the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 74-30300 Filed 12-27-74; 8:45 am]

AMERICAN STOCK EXCHANGE, INC. AND CHICAGO BOARD OPTIONS EXCHANGE, INC.

Rules for a Common Clearing Corporation

Notice is hereby given that the American Stock Exchange, Inc. (Amex) and the Chicago Board Options Exchange, Inc. (CBOE) have each filed pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 (17 CFR 240.9b-1) amendments to the proposed charter, by-laws and rules of the Options Clearing Corporation (OCC). The proposed Rules were originally published at 39 FR 39615 on November 8, 1974.

The amendments comprise amendments to OCC's certificate of incorporation, by-laws and rules, and a draft stockholders agreement and participation exchange agreement among the OCC, the CBOE, the Amex and such other options exchanges as may become parties to either thereof.

All interested persons are invited to submit their views and comments on the proposed OCC charter, by-laws and rules either before or after they have become effective. Written statements of views and comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file number 10-54. All amendments that have been made to the Amex's plans have been placed in their respective option files under file number S7-505. The proposed rules are, and all such comments will be, available for public inspection at the Public Reference Room of the Securities and Exchange Commission at 1100 L Street NW, Washington, D.C.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 16, 1974.

[FR Doc. 74-30298 Filed 12-27-74; 8:45 am]

BOSTON STOCK EXCHANGE

Applications for Unlisted Trading Privileges in Certain Securities

December 19, 1974.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Auto-Train Corp.	7-4704
Capital Holding Corp.	7-4705
Hammermill Paper Co.	7-4706
Quaker Oats Co.	7-4707
The Southern New England Telephone Co.	7-4708
US Life Corp.	7-4709
Vetco Offshore Industries, Inc.	7-4710
Moore & McCormack Resources, Inc.	7-4711

Upon receipt of a request, on or before January 5, 1975 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
[FR Doc.74-30301 Filed 12-27-74;8:45 am]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Non-disapproval of Amendments to Option Plan

Notice is hereby given that on December 18, 1974, the Commission considered and did not disapprove proposed amendments to the Option Plan of the Chicago Board Options Exchange, Inc. (CBOE) pursuant to Rule 9b-1 under Securities Exchange Act of 1934 (17 CFR 240.9b-1). The CBOE proposed to amend Rules 12.3(a)(5), 12.3(b), 12.3(c), and 12.5; and delete Rules 12.4 and 12.6 (the "Margin Amendments"). The proposed changes were originally noticed at 39 FR 40203 on November 14, 1974.

CBOE has deemed it appropriate to amend its margin rules at this time to reflect both the initiation of trading on other exchanges and the adoption of uniform rules by the New York Stock Exchange and CBOE.

All interested persons are invited to submit their views and comments on the rules amendments and deletions to CBOE's plan either before or after they have become effective. Written statements of views and comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file number 10-54. The rules amendments and deletions are, and all such comments will be, available for public inspection at the Public Reference Room of the Securities and Exchange Commission at 1100 L Street NW., Washington, D.C.

By the Commission.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
DECEMBER 19, 1974.
[FR Doc.74-30299 Filed 12-27-74;8:45 am]

[File No. 500-1]

DATA LEASE FINANCIAL CORP. Suspension of Trading

DECEMBER 19, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 7 percent convertible debentures due May, 1989 and units consisting of \$1000 of debentures, 37 shares of common stock and 25 warrants of Data Lease Financial Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of

1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1 P.M. (EST) on December 19, 1974 through midnight (EST) on December 28, 1974.

By the Commission.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
[FR Doc.74-30296 Filed 12-27-74;8:45 am]

[File No. 500-1]

DISPOSABLE RESEARCH INDUSTRIES Suspension of Trading

DECEMBER 19, 1974

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Disposable Research Industries being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 1 P.M. (EST) on December 19, 1974 through midnight (EST) on December 28, 1974.

By the Commission.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
[FR Doc.74-30293 Filed 12-27-74;8:45 am]

[File No. 500-1]

POTTER INSTRUMENT CO. Suspension of Trading

DECEMBER 19, 1974.

The common stock of Potter Instrument Company, Inc. being traded on the American and Philadelphia-Baltimore-Washington Stock Exchanges pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Potter Instrument Company, Inc. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from 1 P.M. (EST) on December 19, 1974 through midnight (EST) on December 28, 1974.

By the Commission.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
[FR Doc.74-30294 Filed 12-27-74;8:45 am]

SEC REPORT COORDINATING GROUP (ADVISORY)

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770, the Securities and Exchange Commission announces a public advisory committee meeting.

The Commission's Report Coordinating Group (Advisory), will hold a meeting on January 10, 1975 at the Securities and Exchange Commission, 500 North Capitol Street, Room 858, Washington, D.C. The meeting will commence at 10 a.m. local time and will be for the purpose of discussing the FOCUS Report of financial and operational information.

The Group's meetings are open to the public. Any interested person may attend and appear before or file statements with the advisory committee. Said statements, if in written form may be filed before or after the meeting. Oral statements shall be made at the time and in the manner permitted by the Report Coordinating Group.

The Report Coordinating Group was formed to assist the Commission in developing a coherent, industry-wide, coordinated reporting system. In carrying out this objective, the Report Coordinating Group is to review all reports, forms and similar materials required of broker-dealers by the Commission, the self-regulatory community and others. The Group is expected to advise the Commission on such matters as eliminating unnecessary duplication in reporting, reducing reporting requirements where feasible, and developing the FOCUS Report of financial and operational information. (Securities Exchange Act Release No. 10612; Securities Exchange Act Release No. 10959).

Information concerning the meeting, including the procedures for submitting statements to the Group, may be obtained by contacting: Mr. Daniel J. Piliero II, Secretary, SEC Report Coordinating Group, Securities and Exchange Commission, Washington, D.C. 20549.

[SEAL] **GEORGE A. FITZSIMMONS,**
Secretary.
[FR Doc.74-30297 Filed 12-27-74;8:45 am]

[File No. 500-1]

STELBER INDUSTRIES, INC. Suspension of Trading

DECEMBER 19, 1974

The common stock of Stelber Industries, Inc. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Stelber Industries, Inc. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on

a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a) (4) and 15(c) (5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from 1 P.M. (EST) on December 19, 1974 through midnight (EST) on December 28, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary,

[FR Doc.74-30295 Filed 12-27-74; 8:45 am]

TARIFF COMMISSION

[TEA-W-257]

ANDREW MANUFACTURING CORP., N.Y.

Workers' Petition for a Determination

On the basis of a petition filed under section 301(a) (2) of the Trade Expansion Act of 1962, on behalf of the former workers of Andrew Manufacturing Corporation, New York, New York, the United States Tariff Commission, on December 23, 1974, instituted an investigation under section 301(c) (2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the type provided for in item 700.45 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioner. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed by January 9, 1975.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission at 6 World Trade Center.

Issued: December 24, 1974.

By Order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.74-30360 Filed 12-27-74; 8:45 am]

VETERANS ADMINISTRATION

ADVISORY COMMITTEE ON STRUCTURAL SAFETY OF VETERANS ADMINISTRATION FACILITIES

Notice of Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Advisory Committee on

Structural Safety of Veterans Administration Facilities will be held in Room 442 at the Veterans Administration Central Office, 811 Vermont Avenue, NW., Washington, D.C., on January 17, 1975 at 10 a.m. The Committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake, and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. James Lefter, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202-389-2868), prior to January 15, 1975.

Dated: December 20, 1974.

By direction of the Administrator.

[SEAL] R. L. ROUDEBUSH,
Administrator.

[FR Doc.30310 Filed 12-27-74; 8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 662]

Assignment of Hearings

DECEMBER 24, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after December 30, 1974.

MC-C-7996, Film Transit, Inc., et al.-v-Cape Air Freight, Inc., now assigned January 20, 1975, at Kansas City, Mo. is postponed to March 10, 1975.

MC 41406 Sub 40, Artim Transportation System, Inc., now assigned January 23, 1975, at Columbus, Ohio, is postponed indefinitely.

MC 107295 Sub 695, Pre-Fab Transit Co., now assigned January 28, 1975, at Washington, D.C., is cancelled and application is dismissed.

MC 1838 Sub 10, Alex Smith, Inc., now assigned February 19, 1975, at Washington, D.C., is cancelled and application is dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-30349 Filed 12-27-74; 8:45 am]

[Notice No. 209]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

DECEMBER 30, 1974.

Synopses of orders entered by the Motor Carrier Board of the Commission

pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before January 20, 1975. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74886. By supplemental order of 12.13.74 the Motor Carrier Board approved the transfer to Dahlsten Truck Line, Inc., Clay Center, Nebraska, of Certificate No. MC-115669 (Sub-No. 134) issued January 16, 1974, to Howard N. Dahlsten, doing business as Dahlsten Truck Line, Clay Center, Nebraska, which certificate inadvertently was not included in the order entered January 14, 1974, in the subject proceeding, approving the transfer to transferee of all of the outstanding certificates of transferor. The certificate approved for transfer by this supplemental order authorizes the transportation of: Dry feed ingredients from Van Buren, Ark., to points in Arkansas, Colorado, Kansas, Iowa, Minnesota, Missouri (except St. Louis and those points in Missouri which are located in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone as defined by the Commission), Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. Mr. Donald L. Stern, Attorney at Law, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106.

No. MC-FC-75474. By order of December 13, 1974, the Motor Carrier Board approved the transfer to Peter R. Jacobs, doing business as Central Banana Carriers, Ashland, Va., of the operating rights in Certificate No. MC-117743 issued October 17, 1972, to RPM Distributors, Inc., doing business as Central Banana Carriers, Doswell, Va., authorizing the transportation of bananas, from Norfolk, Va., to Boston, Mass., Chicago, Ill., Indianapolis, Ind., Louisville, Ky., Huntington and Wheeling, W. Va., Richmond, Va., and the District of Columbia, and points in Michigan, Ohio, and Pennsylvania; from Baltimore, Md., and Charleston, S.C., to Norfolk and Richmond, Va.; from Philadelphia, Pa., to Norfolk, Va., and from New York, N.Y., to Richmond, Va. Stanley I. Goldman, 1700 K Street NW., Washington, D.C. 20006, attorney for applicants.

No. MC-FC-75480. By order of December 13, 1974, the Motor Carrier Board

approved the transfer to Lee's Towing Service, Inc., Chicago, Ill., of the operating rights in Certificate No. MC-117064 issued September 10, 1974, to Hi-Way Towing Service, Inc., Worth, Ill., authorizing the transportation of tractors and trailers (to be used as replacement vehicles) and disabled tractors, trailers, automobiles, buses, and trailers (except those designed to be drawn by passenger automobiles), in wrecker-type service, between points in Illinois, Iowa, Indiana, Michigan, and Wisconsin (except points in Milwaukee County). William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080, attorney for applicants.

No. MC-FC-75486. By order of December 16, 1974, the Motor Carrier Board approved the transfer to Tompkinsville Transfer Co., Inc., Tompkinsville, Ky., of the Certificate of Registration in No. MC-98438 (Sub-No. 2) issued March 28, 1972, to Truman Hollinsworth, doing business as Tompkinsville Transfer Company, Tompkinsville, Ky., evidencing the right of the holder to engage in operations as a motor vehicle in interstate or foreign commerce corresponding in scope to the grant of authority in Certificates of Convenience and Necessity No. 358 and No. 465 transferred to transferor June 5, 1962, as issued by the Department of Motor Transportation of Kentucky. Louis J. Amato, P.O. Box E, Bowling Green, Ky. 42101, attorney for applicants.

No. MC-FC-75492. By order of December 16, 1974, the Motor Carrier Board approved the transfer to Calvin P. Boer, doing business as Boer's Transfer and Storage, Holland, Mich., of the operating rights in Certificates Nos. MC-45974 and MC-35974 (Sub-No. 1) issued December 29, 1950, to Amy Boer, doing business as Boer's Transfer, Holland, Mich., authorizing the transportation of household goods as defined by the Commission, between Holland, Mich., and points within 30 miles thereof, on the one hand, and, on the other, points in Illinois, Indiana, Iowa, Wisconsin, Michigan, Ohio, Pennsylvania, and New Jersey. Ronald L. Dalman, 272-274 East 8th Street, Holland, Mich. 49423, attorney for applicants.

No. MC-FC-75494. By order of December 13, 1974, the Motor Carrier Board approved the transfer to Bud's Wrecker Service, Inc., South Bend, Ind., of the operating rights in Certificate No. MC-123247 issued March 29, 1962, to Marilyn J. Odle, doing business as Bud's Wrecker Service, South Bend, Ind., authorizing the transportation of used tractors, in secondary movements, in truckaway service, and used trailers to be used as replacement vehicles for wrecked, damaged or disabled tractors, trailers, or semi-trailers, wrecked or disabled motor vehicles, including wrecked or disabled trailers and semi-trailers, and motor vehicle parts, accessories, supplies, and materials, moving in wrecker equipment, between points in Indiana, Michigan, Ohio, Illinois, Wisconsin, and Kentucky. Harry J. Harman, 8130 South Meridian,

Indianapolis, Ind. 46217, attorney for applicants.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.74-30348 Filed 12-27-74;8:45 am]

[Notice No. 169]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 19, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a (a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, by January 14, 1975. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D. C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC. 63417 (Sub-No. 72 TA) (amendment), filed November 4, 1974, published in the FEDERAL REGISTER issue of November 18, 1974, and republished as amended this issue. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, 1814 Hollins Road NE., P.O. Box 13447, Roanoke, Va. 24012. Applicant's representative: William E. Bain (same address as applicant).

NOTE.—The purpose of this republication is to add some more supporting shippers. These supporting shippers are: (1) Shector Bros., Hancock & Huntington Street, Philadelphia, Pa. 19133; and (2) Acme Manufacturing Co., 7500 State Road, Philadelphia, Pa. 19136. The rest of the application will remain the same.

No. MC 102567 (Sub-No. 180 TA), filed December 13, 1974. Applicant: MCNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Donald W. English (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Liquid caustic soda, in bulk, in tank vehicles, from Natchitoches, La., to points in Texas, Mississippi, Oklahoma, and Arkansas, for 180 days. Supporting shipper: Thompson

Hayward Chemical Company, 1011 Jacks Wells Blvd., Shreveport, La. 71107. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Bldg., 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 103051 (Sub-No. 331 TA), filed December 10, 1974. Applicant: FLEET TRANSPORT COMPANY, INC., 934-44th Avenue, North, Nashville, Tenn. 37209. Applicant's representative: William G. North (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Liquid sugar, in bulk, in tank vehicles, from Belle Glade, Fla., to Athens and Savannah, Ga., and Elkin, Greensboro and Winston-Salem, N.C., for 180 days. Supporting shipper: GCC Beverages, Inc., P.O. Box 593577 AMF, Miami, Fla. 33159. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite A-422-Federal Building, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 107002 (Sub-No. 464 TA), filed December 12, 1974. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representative: John J. Borth (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Tung oil, in bulk, in tank vehicles, from Chason, Fla., to International Falls, Minn. for 180 days. Supporting shipper(s): Alnor Oil Company, Inc. P.O. Box 83, Valley Stream, New York 11582. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission Room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 107515 (Sub-No. 969 TA), filed December 11, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Alan E. Serby, 3379 Peachtree Road NE., Suite 375, Atlanta, Ga. 30326. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Frozen foods, from plantsite of Odon's Sausage Company, Adairville, Ky., to points in the United States (except Alaska, Hawaii, Montana, Idaho, Wyoming and Utah), for 180 days. Supporting shipper: Odom's Sausage Company, 910 Neeley's Bend Road, Madison, Tenn. 37115. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 108207 (Sub-No. 412 TA), filed December 13, 1974. Applicant: FROZEN FOOD EXPRESS, 318 Cadiz Street, P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as applicant). Authority sought to operate as a common carrier,

by motor vehicle, over irregular routes, transporting: *Fresh and frozen boxed meat products*, from Ames, Iowa, to Wichita, Kans., for 180 days. Supporting shipper: Carriage House Meat & Provision Co., Inc., 1131 Dayton, Ames, Iowa 50010. Send protests to: Gerald T. Holland, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 112588 (Sub-No. 21 TA), filed December 13, 1974. Applicant: RUSSELL TRUCKING LINE, INC., 2011 Cleveland Road, Sandusky, Ohio 44870. Applicant's representative: Peter H. Hanley, President (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Portland Cement*, from the plantsite of Medusa Cement Co. at Baybridge, Ohio, to Rochester and Buffalo, New York, Erie, Pittsburgh, Wampum, Indiana, and Josephine, Pennsylvania, for 90 days. Supporting shipper(s): Medusa Cement Co., P.O. Box 5668 Cleveland, Ohio 44101. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Summit Street, Toledo, Ohio 43604.

No. MC 113666 (Sub-No. 89 TA), filed December 16, 1974. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, Pa. 16229. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium carbide*, in bulk, in specially designed hopper-type trailers, from Ashtabula, Ohio, to points in Pennsylvania and New Jersey, for 180 days. Supporting shipper: Shawinigan Products Corp., P.O. Box 1156, Englewood Cliffs, N.J. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 113908 (Sub-No. 330 TA), filed December 12, 1974. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, P.O. Box 3180, Glenstone Station, Springfield, Mo. 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and de-icer* in bags, cartons, drums and in bulk, from Viroqua, Wis., to points in Indiana, Kansas, Nebraska, North Dakota, Ohio, and South Dakota, for 180 days. Supporting shipper: Howard B. Johnson Enterprises, Inc., P.O. Box 67, Viroqua, Wis. 54665. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 125950 (Sub-No. 8 TA) (Correction) filed December 9, 1974, published in the FEDERAL REGISTER issue of December 18, 1974, and republished as

corrected this issue. Applicant: C.B.S. TRANSPORTATION, INC., 1207 Columbus Circle, Wilmington, N.C. 28401. Applicant's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit and vegetable containers*, from the plantsite of the Talley-Corbett Box Company at Adel, Ga. and Springfield, S.C., to points in Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York, for 180 days. SUPPORTING SHIPPER: Talley-Corbett Box Company, Inc., P.O. Box 89, Adel, Ga. 31620. SEND PROTESTS TO: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 26896, Raleigh, N.C. 27611. Note: The purpose of this republication is to show that the origin is Springfield, S.C., in lieu of Springfield, N.C., which was published in the Federal Register in error.

No. MC 126458 (Sub-No. 6 TA), filed December 12, 1974. Applicant: ASCENZO & SONS, INC., 535 Brush Avenue, Bronx, New York 10465. Applicant's representative: Bert Collins, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated and untreated piling* on special equipment, from Hollywood, Salisbury and Baltimore, Md., Williamston, N.C., to New York, N.Y., Nassau, Suffolk, Westchester, Rockland and Orange Counties, N.Y., Bergen, Hudson, Essex, Union, Middlesex and Morris Counties, N.J. for 180 days. Supporting shipper(s): C. K. Forest Products, Inc., 2938 Hempstead Turnpike, New York, N.Y. 11756. Send protests to: Marvin Kampel, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza Room 1807, New York, N.Y. 10007.

No. MC 127355 (Sub-No. 16 TA), filed December 9, 1974. Applicant: M & N GRAIN COMPANY, a Corporation, P.O. Box "P", Nevada, Mo. 64772. Applicant's representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cottonseed meal and hulls, fish meal, meat and bone meal, tankage, blood meal, bone meal, linseed oil meal, hominy meal, gluten feed, gluten meal, dehydrated alfalfa (ground or pellets), beet pulp, brewer's grains, malt sprouts, grain screenings (pallets), mill feed (bran, middlings, red dog, shorts germ, and millrun), ground corn cobs, potato meal, oat meal, feather meal, poultry by-products, peanut meal and hulls, soybean meal, sunflower meal, rapeseed meal, pallet binder (ammonium lignin sulfonate), corn screenings (pallets), uncured alfalfa and distillers grains*, between points in Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Ohio,

Oklahoma, South Carolina, Tennessee, Texas, and Virginia, for 90 days.

NOTE.—Applicant presently holds the sought authority in all states (except North Carolina, South Carolina, and Virginia). Supporting shipper: The Pillsbury Company, 608 Second Avenue South, Minneapolis, Minn. 55402. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 127668 (Sub-No. 6 TA), filed December 16, 1974. Applicant: WILLIAM WELCH AND JOHN WELCH, doing business as WELCH TRUCKING COMPANY, 1105 South Boulder, Portales, N. Mex. 88130. Applicant's representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, N. Mex. 87101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides, pelts, skins, hair, tails, switches and bone meal*, (1) from points in Texas, and New Mexico, to points in Arizona; (2) between points in Texas; and (3) from points in New Mexico, to points in Texas, for the account of Southwest Hide Co., Phoenix, Ariz., for 180 days. Supporting shipper: Southwest Hide Co., 3009 North 49th Street, Phoenix, Ariz. 85018. SEND PROTESTS TO: John H. Kirkemo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue, SW, Albuquerque, N. Mex. 87101. Note: Applicant states it will tack.

No. MC 133655 (Sub-No. 81 TA), filed December 13, 1974. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 4168, Amarillo, Tex. 79105. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery blends*, from Pickerington, Ohio, to points in Texas, for 150 days. Supporting shipper: Ronald J. Schuckmann, Traffic Manager, DMI Inc., 303 E. Caldwell St., Louisville, Ky. 40203. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 134819 (Sub-No. 2TA), filed December 12, 1974. Applicant: RALPH W. KING, doing business as R. W. KING TRUCKING, 9842 East Belmont Avenue, Sanger, Calif. 93657. Applicant's representative: William H. Kessler, 638 Divisadero Street, Fresno, Calif. 93721. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fence palings, ridge, shakes, and shingles*, from points in Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties, Ore. and points in Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum Counties, Wash., to points in Fresno County, Calif., for 180 days. Supporting shippers: (1) Altamont Cedar Shake and Shingle Co., 1950 East Tyler Avenue,

Fresno, Calif. 93701; (2) Long's Building Supply, 2380 North Clovis Avenue, Clovis, Calif. 93612; and (3) Zumwalt Roofing Co., 4683 East Hammond Avenue, Fresno, Calif. 93726. Send protests to: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 134922 (Sub-No. 108TA), filed December 12, 1974. Applicant: B. J. McADAMS, INC., Rt. 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Don Garrison (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Recreational vehicles; parts, equipment and supplies* used in the manufacture thereof, restricted against the transportation of commodities which by reason of size or weight require the use of special equipment, from Mansfield, Ohio, to points in California, Florida, Georgia, Idaho, Montana, Texas, and Washington, for 180 days. Supporting shipper: Rupp Industries, Inc., 1776 Airport Road, Mansfield, Ohio 44903. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201. Note: Applicant states it will tack at Mansfield, Ohio.

No. MC 138164 (Sub-No. 7 TA), filed December 12, 1974. Applicant: CAN-AM MARINE TRANSIT LTD., P.O. Box 790, Hudson, Quebec, Canada JOP 1H0. Applicant's representative: J. P. Vermette, 250 Napoleon-Provost Street, Repentigny, Quebec, Canada J6A 1H5. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Sailboats*, from all ports of entry on the International Boundary line between the United States and Canada located in North Dakota, Minnesota, Michigan, New York, Vermont, and Maine, to points in Alabama, Arkansas, Colorado, Florida, Georgia, Iowa, Kansas, Louisiana, Missouri, Mississippi, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and West Virginia, for 180 days. Restriction: Restricted to the transportation of traffic having an immediate prior movement in foreign commerce originating from the Province of Quebec, Canada. Supporting shippers: Performance Sailcraft, Inc., 91 Hymus Blvd., Pointe Claire, Quebec, Canada and Tanzer Industries Ltd., P.O. Box 105, Dorion (Montreal), Quebec, Canada. Send protests to: District Supervisor Paul D. Collins, Interstate Commerce Commission, Bureau of Operations, P.O. Box 548, 87 State Street, Montpelier, Vt. 05602.

No. MC 139570 (Sub-No. 1 TA), filed December 13, 1974. Applicant: LEASECON INC., 5 High Street, West Nyack, N.Y. 10994. Applicant's representative: Bert Collins, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, other than those designed to be drawn by passenger

automobiles, containers, truck chassis and trailer chassis and trailer parts, from Middletown, N.Y., to points in Hudson, Middlesex, Hudson, Essex and Union Counties, N.J., New York, N.Y. Commercial Zone and Boston, Mass. Commercial Zone; and (2) *Returned, rejected or damaged trailers, containers, etc., and materials, supplies and equipment* used or useful in connection with the manufacture, sale or distribution of said commodities, from the destination territory above referred to, to Middletown, N.Y., for 180 days. Restriction: The proposed service to be under contract with Strick Corp. Supporting shipper: Strick Corporation, Manager of Physical Distribution, U.S. Highway #1, Fairless Hills, Pa. 19030. Send protests to: Stephen P. Tomany, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 140413 (Sub-No. 1 TA), filed December 13, 1974. Applicant: JOE L. RABUN, doing business as RABUN TRUCKING CO., Route No. 2, Stapleton, Ga. 30823. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree Street, Atlanta, Ga. 30309. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Agricultural lime*, in bulk, from points in Blount, Jefferson and Knox Counties, Tenn., to points in Georgia (except points in Jefferson County, Ga., south of Georgia Highway 24) and points in South Carolina, for 180 days. Supporting shipper: Gold Kist, Inc., 3348 Peachtree Road NE, Atlanta, Ga. 30326. Send protests to: William L. Scroogs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street, N.W., Room 546, Atlanta, Ga. 30309.

No. MC 140419 (Sub-No. 1 TA), filed December 13, 1974. Applicant: RUSSELL HALVERSON, doing business as M. R. TRUX, P.O. Box 1794, Sioux Falls, S. Dak. 57101. Applicant's representative: F. H. Kroeger, 1745 University Avenue, St. Paul, Minn. 55104. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Conveyors and conveyor parts*, from Sioux Falls, S. Dak., to Fairbanks, Alaska, for 180 days. Supporting shipper: Kolman Div./Athey Products Corp., 5100 West 12th Street, Sioux Falls, S. Dak. 57107. Gary L. Woessner, Traffic Mgr. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 140463 TA, filed December 11, 1974. Applicant: ORREN J. LEE, 2312 Braemer Drive, Sioux Falls, S. Dak. 57105. Applicant's representative: M. Mark Menard, 307 West Fourteenth, Sioux Falls, S. Dak. 57105. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Dairy products*, as described in Group B of Appendix I to the Description case 61 M.C.C. 209, from Sioux Falls, S. Dak., to points in South Dakota, Minnesota, Iowa, and that part of Nebraska lying east of Highway 81,

for 180 days. Supporting shipper: Terrace Park Dairy, 1501 West 10th, Sioux Falls, S. Dak., Oswald E. Schock, Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 140464 TA, filed December 13, 1974. Applicant: D-X TRUCKING, INC., 2432 Sylvania Avenue, Toledo, Ohio 43613. Applicant's representative: Jack K. Rau (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Glass and glassware*, as described in Appendix IX, to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, between Upper Sandusky, Ohio and Atlanta, Ga.; S. Holland, Ill.; Wichita, Kans.; S. Boston, Mass.; Carleton, Detroit, Oak Park, and Southfield, Mich.; Kearney, N.J.; Bronx, N.Y.; Memphis, Tenn.; Dallas, Tex.; and points in the District of Columbia, for 180 days. Supporting shipper: Guardian Industries Corp., 14600 Romine Road, Carleton, Mich. 48117. Send protests to: Keith D. Warner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Toledo, Ohio 43604.

MOTOR CARRIERS OF PASSENGERS

No. MC 2832 (Sub-No. 10 TA), filed December 2, 1974. Applicant: THE KELLEY TRANSIT COMPANY, INC., 30 Railroad Square, Torrington, Conn. 06790. Applicant's representative: Thomas A. Kelley, Jr. (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in round trip, special operations, (1) beginning and ending at points in Litchfield County, Conn. and Miller-ton, N.Y.; and extending to Boston, Fall River, Foxboro, Gloucester, Hyannis, New Bedford, Newburyport, Orleans, Plymouth, Provincetown, Salem, Springfield, Sturbridge, and West Springfield, Mass., and Newport and Providence, R.I.; and (2) beginning and ending at points in Litchfield County, Conn. and Miller-ton, N.Y. and extending to Westfield, Easthampton, Northampton, South Deerfield, Greenfield, Northfield, Shelburne Falls, North Adams, Williamstown, Pittsfield, Lenox, Great Barrington, Sheffield, Hancock, Mass., and New Lebanon, Green River, and Hillsdale, N.Y., for 180 days. Supporting shippers: There are approximately 12 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at field office named below. Send protests to: District Supervisor Davis J. Kiernan, Interstate Commerce Commission, Bureau of Operations, 324 U.S. Post Office Building, 135 High Street, Hartford, Conn. 06101.

By the Commission.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.74-30346 Filed 12-27-74; 8:45 am]

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PART II



HOUSING AND URBAN DEVELOPMENT



HOUSING ASSISTANCE PAYMENTS PROGRAM

New Construction

Title 24—Housing and Urban Development
CHAPTER VIII—LOW RENT PUBLIC HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-74-305]

PART 1277—HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

Notice was given on November 22, 1974 at 39 FR 41063 that the Department of Housing and Urban Development (HUD) was proposing to amend Title 24 of the Code of Federal Regulations by adding a new Part 1277 to Chapter VIII.

The purpose of Part 1277 is to set forth the essential elements of the Housing Assistance Payments Program—Substantial Rehabilitation, including among other things, the roles and responsibilities of HUD, public housing agencies (PHAs), rehabilitators, owners, and eligible lower- and very low-income families, the basis for determining the amount of housing assistance payments, and the prescribed forms of contracts.

HUD has received more than 115 responses to the November 22, 1974 publication. All of these comments were seriously considered and many changes have been incorporated in these regulations as a result. The principal changes are set forth below.

1. § 1277.101(b) has been modified so as to provide that projects already being rehabilitated may be eligible for participation under this Part if certain specified conditions are satisfied.

2. Provision is made for the PHA to make the determination with respect to Allowances for Utilities and Other Services, as set forth in §§ 1277.102(b) and 1277.218(i), respectively, in the case of a Private-Owner/PHA Project (as defined in § 1277.102(x)).

3. The definition of "Eligible Family," as set forth in § 1277.102(f), has been modified to clarify that disabled persons are included within this definition.

4. A definition of the term "HUD" has been added in a new § 1277.102(n) to include HUD's designee.

5. The procedures for inviting, ranking and selecting Preliminary Proposals (as defined in 1277.102(w)) as set forth in §§ 1277.103(b), 1277.203, 1277.204(b) and 1277.208 have been clarified.

6. §§ 1277.103(e)(2) and 1277.103(e)(3) have been modified to increase the percent of Contract Rent payable in the event of vacancies from 70 to 80.

7. In § 1277.103(f) the provisions concerning approval of Contract Rents in excess Fair Market Rents have been clarified.

8. § 1277.103(h)(3), the provision authorizing special additional adjustments under limited circumstances, has been clarified.

9. §§ 1277.103(q)(1), 1277.103(q)(2), 1277.204(c)(10), 1277.205(c), 1277.209(a)(13), respectively, have been clarified with respect to situations where the Agreement or Contract is pledged as security for financing.

10. A new § 1277.103(q)(3) has been added to clarify the status of the Housing

Assistance Payments Contract in the event of foreclosure, assignment or sale.

11. § 1277.103(r) has been modified to permit the owner to require each Family to make a security deposit in the amount of one month's Gross Family Contribution.

12. The provision precluding a PHA from being the Contract administrator where it is also the lender has been replaced by a provision permitting the PHA to administer the Contract in such cases subject to an express provision in the Contract giving HUD the right to take unilateral action in default situations (see § 1277.103(v)).

13. § 1277.208(a) has been clarified to give the owner opportunity to supply omissions to the proposal.

14. § 1277.210 has been modified to provide for notification to the unit of general local government as to HUD's final action with respect to Final Proposals (as defined in § 1277.102(h)).

15. §§ 1277.211(b)(2) and 1277.216(b)(4)(iv), respecting the certifications (if applicable) of the design architect and the inspecting architect have been clarified; and § 1277.216(c), regarding the scope and nature of the inspection and determination to be made by HUD upon completion of the project, has been clarified.

16. § 1277.216(d), which sets forth the criteria for acceptance of a project, has been modified.

17. § 1277.218(i), which provides for the reduction of Contract units utilized by an owner over a substantial period of time for other than Eligible Families, has been modified to provide for restoration of the withdrawn units under certain circumstances.

In view of the necessity to limit the comment period to fifteen days because of the statutory requirement that these regulations be made effective by January 1, 1975, comments will be received by HUD for a period of 30 days from the date of publication of these regulations, and HUD promptly at the end of the 30 day period will make such modifications in these regulations as it deems appropriate.

In order to comply with the aforementioned statutory requirement, the Assistant Secretary for Housing Production and Mortgage Credit/FHA Commissioner has determined that these regulations be made effective January 1, 1975.

Effective date. These regulations shall become effective January 1, 1975. Accordingly, Title 24 is amended as follows:

A new Part 1277, Section 8 Housing Assistance Payments—Substantial Rehabilitation, is added to Chapter VIII to read as set forth below.

PART 1277—HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

Subpart A—Applicability, Scope and Basic Policies

Sec.

- 1277.101 Applicability and scope.
- 1277.102 Definitions.
- 1277.103 Basic policies.

Subpart B—Project Development and Operation

- 1277.201 Allocations of contract authority to field offices.
- 1277.202 Program mix (new construction substantial rehabilitation, existing housing).
- 1277.203 Invitations for preliminary proposals.
- 1277.204 Contents of rehabilitation program packet.
- 1277.205 Contents of preliminary proposal.
- 1277.206 Submission of preliminary proposals.
- 1277.207 Proposal involving HUD-FHA mortgage insurance.
- 1277.208 Screening and evaluation of preliminary proposals.
- 1277.209 Final proposals.
- 1277.210 Evaluation of final proposals.
- 1277.211 Owner's acceptance of notification and submission of architect's certification.
- 1277.212 Annual contributions contract and agreement (private-owner/PHA projects).
- 1277.213 Submission of estimates of required annual contributions (private-owner/PHA projects).
- 1277.214 Preparation and execution of agreement (private-owner and PHA-owner projects).
- 1277.215 Rehabilitation period.
- 1277.216 Project completion.
- 1277.217 Execution of housing assistance payments contract.
- 1277.218 Project operation.
- 1277.219 HUD review contract compliance.
- 1277.220 PHA reporting requirements [Reserved]

APPENDICES

NOTE—Various prescribed forms which relate to internal HUD processing procedures are not included herein, but will appear in the HUD Substantial Rehabilitation Handbook.

I. Agreement to enter into housing assistance payments contract—private-owner or PHA-owner project.

II. Housing assistance payments contract—private-owner or PHA-owner project.

III. Annual contributions contract—private-owner/PHA project.

IV. Agreement to enter into housing assistance payments contract—private-owner/PHA project.

V. Housing assistance payments contract—private-owner/PHA project.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); sec. 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Subpart A—Applicability, Scope and Basic Policies

§ 1277.101 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of housing assistance payments on behalf of Eligible Families leasing substantially rehabilitated housing pursuant to the provisions of Section 8 of the U.S. Housing Act of 1937 ("Act").

(b) For the purpose of this Part, "substantially rehabilitated housing" shall mean housing requiring substantial rehabilitation (See Sec. 1277.102(bb)) for which, prior to the start of rehabilitation, an Agreement to Enter into Housing Assistance Payments Contract is executed between the Owner and the Department of Housing and Urban Development ("HUD") or the Public Housing Agency. However, housing already undergoing

rehabilitation may be eligible for participation if all subsequent actions are in compliance with this Part and if the Owner certifies and demonstrates to the satisfaction of HUD that:

(1) At the date of application to HUD, a substantial amount of rehabilitation (generally at least 25 percent) remains to be completed; and

(2) At the date of application to HUD, the project cannot be completed without a commitment for assistance under this Part; and

(3) At the time rehabilitation was initiated, all of the parties reasonably expected that the project would be completed without assistance under this Part.

(c) Conversions of Section 23 projects to the Section 8 program will be permitted where appropriate, provided that all parties (including HUD) agree to the terms and conditions.

§ 1277.102 Definitions.

(a) *Agreement to Enter into Housing Assistance Payments Contract ("Agreement")*. (1) In the case of a Private-Owner Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the rehabilitation in accordance with the HUD-approved Final Proposal, HUD will enter into a Housing Assistance Payments Contract with the Owner. (See Appendix I.)

(2) In the case of a Private-Owner/PHA Project, a written agreement between the private Owner and the PHA, approved by HUD, that, upon satisfactory completion of the rehabilitation in accordance with the HUD-approved Final Proposal, the PHA will enter into a Housing Assistance Payments Contract with the private Owner. (See Appendix IV.)

(b) *Allowance for Utilities and Other Services ("Allowance")*. An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family. In the case of a proposal under which the Families must pay directly for one or more utilities or services, the amount of the Allowance is deducted from the Gross Rent in determining the Contract Rent and is included in the Gross Family Contribution.

(c) *Annual Contributions Contract ("ACC")*. In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project. (See Appendix III.)

(d) *Contract Rent*. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family in the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

(e) *Decent, Safe, and Sanitary*. Housing is Decent, Safe, and Sanitary at completion of rehabilitation if the dwelling units and related facilities are accepted by HUD as meeting the require-

ments of the Agreement. (See Sec. 1277.216.) Housing continues to be Decent, Safe, and Sanitary if it is being maintained in a condition substantially the same as that on acceptance in all pertinent respects, including the following:

(1) Condition of the exterior (including the grounds) and the interior of the structure and of the housing unit;

(2) Operating condition of sanitary facilities and of solid and liquid waste disposal facilities;

(3) Operating condition of kitchen facilities, including range and refrigerator, sink, and space for storage of food and for storage of utensils and dishes;

(4) Operating condition of heating, lighting and ventilating equipment and/or other facilities; and

(5) Size, number of rooms, and furnishings in relation to the size and type of Family in occupancy in accordance with any applicable State or local codes.

(f) *Eligible Family ("Family")*. A Family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this Part. The term Family includes an elderly, disabled, handicapped, or displaced person and the remaining member of a tenant family as defined in section 3(2) of the Act. A Family's housing assistance payment may continue until its Gross Family Contribution equals the Gross Rent for the dwelling unit it occupies, but the termination of housing assistance payments at such point shall not affect the family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or other relevant circumstances during the term of the Contract.

(g) *Fair market rent*. (1) The rent which is determined by HUD as the Fair Market Rent for new construction projects under Section 8 of Act. This Fair Market Rent is the rent, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately developed and owned, newly constructed rental housing of modest (non-luxury) nature with suitable amenities and sound architectural design meeting the objectives of the HUD Minimum Property Standards.

(2) Separate Fair Market Rents will be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator, row, detached; housing designed for the elderly or handicapped shall be a separate type for this purpose).

(3) The Fair Market Rents will be published in the FEDERAL REGISTER, and, in order to allow for the period of rehabilitation, computation of the published Fair Market Rents will include HUD's estimate of anticipated rent increases during an appropriate future period as stated in the publication. Accordingly, for any given project for which the scheduled time for rehabilitation will be less than

such future period, an appropriate reduction will be made in determining the approvable Contract Rent.

(4) The Fair Market Rent, minus the amount of any applicable Allowance for Utilities and Other Services payable directly by the Family, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be lower as stated in paragraph (g)(3) of this Section and may be higher or lower as provided in Sec. 1277.103(f).

(h) *Final proposal*. A proposal to provide substantially rehabilitated housing submitted in response to a HUD notification of section of Preliminary Proposal. (See Secs. 1277.204 and 1277.208-1277.210.)

(i) *Gross family contribution*. The portion of the Gross Rent payable by an Eligible Family, i.e., the difference between the amount of the housing assistance payment payable on behalf of the Family and the Gross Rent.

(j) *Gross rent*. The Contract Rent plus any Allowance for Utilities and Other Services.

(k) *HCD Act*. The Housing and Community Development Act of 1974.

(l) *Housing Assistance Payments Contract ("Contract")*. (1) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix II.)

(2) In the case of a Private-Owner/PHA Project, a written contract between the private Owner and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix V.)

(m) *Housing assistance payments on behalf of eligible family*. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD. (See Sec. 1277.103(t).)

(n) *HUD*. The Department of Housing and Urban Development or its designee.

(o) *Income*. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

(p) *Invitation for preliminary proposals—substantial rehabilitation ("Invitation for Preliminary Proposals")*. A notice published by HUD inviting the submission of Preliminary Proposals in accordance with this Part. (See Sec. 1277.203.)

(q) *Lease*. A written agreement between an Owner and an Eligible Family for the leasing of a Decent, Safe, and Sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this Part.

(r) *Local Housing Assistance Plan*. A housing assistance plan submitted by a unit of general local government and approved by HUD under section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a

housing plan which contains the elements set forth in section 104(a)(4) of the HCD Act and which is approved by the Secretary as meeting the requirements of section 213 of that Act.

(s) *Lower-income family.* A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

(t) *New communities.* New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

(u) *Owner.* Any private person or entity, including a cooperative, or a PHA, having the legal right to lease or sublease substantially rehabilitated dwelling units.

(v) *PHA-Owner Proposal and PHA-Owner Project.* A proposal for a project under this Part (and the resulting project) to be owned by a PHA throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the PHA and HUD.

(w) *Preliminary proposal.* A proposal to provide substantially rehabilitated housing submitted in response to a HUD Invitation for Preliminary Proposals. (See Secs. 1277.203-1277.208.)

(x) *Private-Owner/PHA Proposal and Private-Owner/PHA Project.* A proposal for a project under this Part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD.

(y) *Private-Owner Proposal and Private-Owner Project.* A proposal for a project under this Part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

(z) *Public Housing Agency ("PHA").* Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families.

(aa) *Secretary.* The Secretary of Housing and Urban Development.

(bb) *Substantial Rehabilitation.* (1) The improvement of a property to Decent, Safe, and Sanitary condition and in accord with HUD requirements from a condition requiring more than routine or minor repairs or improvements of such extent as to necessitate execution of an Agreement prior to the performance of the work. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to cosmetic improvements coupled with cure of sub-

stantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(2) Substantial rehabilitation also includes renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this Part (e.g., conversion of a hotel to housing for the elderly).

(cc) *Very low-income family.* A family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 1277.103 Basic policies.

(a) *Limitation on Use of Substantially Rehabilitated Housing.* (1) No proposal for housing to be rehabilitated may be approved by HUD unless HUD requirements implementing the provisions of sections 213(a), (b), and (c) of the HCD Act regarding review by the unit of general local government have been satisfied.

(2) Substantially Rehabilitated projects shall be permitted only where: (i) HUD determines that there is not and there is not likely soon to be an adequate supply of existing housing which, with the aid of housing assistance payments provided under the Section 8 Housing Assistance Payments Program—Existing Housing, can meet the needs of Eligible Families, or (ii) the proposed project is specifically approved by HUD in accordance with priorities established from time to time by the Secretary including priorities for New Communities which involve substantial rehabilitation.

(b) *Preference for Certain Types of Projects.* (1) *20 percent projects.* Assistance payments may be made with respect to up to 100 percent of the dwelling units in any structure or project. However, within the category of projects that are not designed for use primarily by the elderly and the handicapped and which involve the rehabilitation of more than 50 units, a preference will be provided for projects in which housing assistance will be limited to 20 percent or less of the units. (See Sec. 1277.208(e)(1).)

(2) *Three or more bedroom projects.* Where the need for dwelling units of three or more bedroom size ("large dwelling units") is shown, each HUD field office shall be responsible, to the extent feasible, for inviting and selecting proposals which in the aggregate will achieve the goal of providing a number of large dwelling units equal to at least 20 percent of all the assisted units approved under the section 8 Housing Assistance Payments Program, without undue concentration of such large dwelling units in any one location.

(c) *Maximum Total Annual Housing Assistance Payments (Private-Owner or PHA-Owner Projects).* (1) The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.

(2) A project account will be estab-

lished and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum Contract commitment per year exceeds amounts paid under the Contract for any year. This account will be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

(i) Increases in housing assistance payments; and

(ii) Other costs specifically authorized or approved by the Secretary.

Any balance in this account after payment of the last housing assistance payment shall be applied by HUD as a receipt under section 10(b) of the Act.

(d) *Annual contributions (private-owner/PHA projects).* (1) The maximum total annual contributions that may be contracted for in the ACC for a project shall be: (i) the total of the Gross Rents for all the Contract Units in the project plus (ii) a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(2) A project account will be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

(i) Increases in housing assistance payments;

(ii) Increases in the amount of the fee for regular PHA costs of administration; and

(iii) Other costs specifically authorized or approved by the Secretary.

Any balance in this account after payment of the last annual contribution for the project shall be applied by HUD in accordance with law.

(e) *Housing assistance payments to owners.*—(1) *General.* Housing assistance payments shall be paid to Owners for units under lease by Eligible Families, in accordance with the Contract and as provided in this paragraph (e). The housing assistance payment will pay the Owner the difference between the Contract Rent and the portion of said rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.

(2) *Vacancies during rent-up.* If a Contract unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (i) commenced

marketing and otherwise complied with Sec. 1277.215, (ii) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (iii) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(3) *Vacancies After Rent-up.* (i) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also Sec. 1277.103(a).) The Owner shall not be entitled to any payment under this paragraph (e) (3) (i) unless he: (A) immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (B) has taken and continues to take the actions specified in paragraphs (e) (2) (ii) and (e) (2) (iii) of this section.

(ii) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (e) (3) (i) of this section unless the request for such payment is supported by a certification that (A) he gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (B) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(4) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this paragraph (e) to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocations pursuant to Title I of the HCD Act or payments under § 1277.103(r).)

(f) *Initial maximum rents to Owners.*

(1) The sum of the initial Contract Rents and any Allowances for Utilities and Other Services shall not exceed the Fair Market Rents for newly constructed rental housing, except that such Fair Market Rents may be exceeded (i) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents and the higher rents meet the test of reasonableness in paragraph (f) (2) of this section, or (ii) by up to 20 percent, where the Assistant Secretary for Housing Production and Mortgage Credit determines that special circumstances warrant such higher rents, or that such higher rents are necessary to the implementation of a

local Housing Assistance Plan, or that such higher rents meet the test of reasonableness in paragraph (f) (2) of this section.

(2) The Contract Rents as proposed must be determined by HUD to be reasonable in relation to the quality, location, amenities, methods and terms of financing, and management and maintenance services of the project, and proposed rents shall be subject to reduction if they are found to be higher than such reasonable rents.

(3) In addition, for projects financed with HUD-insured mortgages, initial Contract Rents for units assisted under this Contract shall not exceed the rents approved by HUD in connection with the mortgage insurance for such projects.

(g) *Term of housing assistance payments contract.* (1) A Contract may be for an initial term of not more than five years, with an option solely in the Owner to renew for additional terms of not more than five years each, provided that the total Contract term, including renewals, shall not exceed 20 years for any dwelling unit.

(2) In the case of a Contract under which housing assistance payments are made with respect to a project owned by, or financed by a loan or loan guarantee from, a State or local agency, the total Contract term may not exceed 40 years for any dwelling unit.

(3) Notwithstanding the maximum total allowable term per unit stated in paragraph (g) (1) or (g) (2) of this section, a shorter term shall be determined by HUD where appropriate, taking into account the nature and extent of the required rehabilitation, the amount of the capital expenditures reasonably required under the proposal, the reasonable period and rate of amortization for the financing, and the approved rents to the Owner.

(4) If the project is accepted in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage; provided, however, that the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.

(h) *Rent Adjustments.*—(1) *funding of adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum total annual housing assistance payments committed under the Contract. The provisions of the Contract or the ACC, as the case may be, are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. In addition, the Contract or the ACC, as the case may be, will provide that HUD will take such additional steps

authorized by section 8(c) (6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

(2) *Automatic annual adjustments.*

(i) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(ii) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(3) *Special additional adjustments.* Special additional adjustments may be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(4) *Overall limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this paragraph (h) shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

(i) *Types of housing and property standards.* (1) Existing structures of various types may be appropriate for this program including apartment hotels, single-family houses, or multi-family structures. Hotels or office buildings may be suitable for conversion under this program to housing designed for elderly or handicapped families and individuals, including congregate housing. Single room occupant housing planned specifically as a relocation resource for eligible single persons may also be developed. Units in highrise elevator buildings may not be used for Families with children unless HUD determines there is no practical alternative. Mobile homes may not be utilized in this program.

(2) No section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing for this purpose.

(3) Participation in this program requires compliance with (i) HUD Mini-

minimum Design Standards for Rehabilitation for Residential Properties, (ii) in the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards, (iii) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly or the handicapped, (iv) HUD requirements pertaining to noise abatement and control, (v) HUD regulations issued pursuant to the Lead Base Paint Poisoning Prevention Act, 42 USC 4801, and (vi) applicable State and local laws, codes, ordinances, and regulations.

(j) *Site and neighborhood standards.* Proposed sites for substantial rehabilitation projects must be approved by HUD as meeting the following standards:

(1) Adequate utilities (water, sewer, gas and electricity) and streets shall be available to service the site.

(2) The site and neighborhood shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(3) The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower-income persons.

(4) The site shall be free from serious adverse environmental conditions, or there shall be evidence that any such conditions will be corrected by the time the rehabilitation is completed.

(5) The site shall comply with any applicable conditions in the Local Housing Assistance Plan, approved by HUD.

(6) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized, standard housing of similar market rents.

(7) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, shall not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(8) If the housing to be rehabilitated has occupants, the relocation requirements referred to in Sec. 1277.103(k), must be met.

(9) Housing may not be rehabilitated in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

(k) *Relocation.* (1) In the evaluation or selection of Preliminary Proposals, consideration shall be given to whether there are occupants who would have to

be displaced, whether there is a feasible plan for relocation of such occupants, the degree of hardship which displacement might cause, and the availability of funding for relocation payments. Greater weight shall be given to proposals which do not require displacement, or, where displacement is required, which will involve the least amount of hardship.

(2) In the case of a PHA-Owner Project, no Agreement shall be executed with respect to occupied units which involve substantial rehabilitation requiring that the units be vacated unless the Agreement provides (i) the PHA undertakes liability for and provides the funding of all relocation payments under section 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or (ii) other commitments, satisfactory to HUD, have been made for the funding of such payments. (In the case of a Private-Owner Project or a Private-Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

(l) *Equal opportunity requirements.* Participation in this program requires compliance with (1) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (2) all rules, regulations, and requirements issued pursuant thereto.

(m) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all rules, regulations, and requirements issued pursuant thereto.

(n) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all rules, regulations, and requirements issued pursuant thereto.

(o) *Davis-Bacon Wage Rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any substantial rehabilitation project with nine or more assisted units.

(p) *Types of financing.* Any type of financing may be utilized, including, but not limited to, the types listed below.

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions.

(2) Mortgage insurance programs under the National Housing Act (see Sec. 1277.207). (With respect to any obligation secured by a mortgage insured under section 221(d)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8, the interest paid on such obligation shall be included in gross income

for purposes of Chapter I of the Internal Revenue Code of 1954.)

(3) Home Improvement Loans under Title I of the National Housing Act.

(4) Section 202 of the Housing Act of 1959.

(5) Title V of the Housing Act of 1949.

(6) Financing by tax-exempt bonds or other obligations. Where the financing is by a non-profit corporation which is an agency or instrumentality of a PHA, the project will be considered a PHA-Owner Project.

(q) *Use of contract as security for financing.* (1) An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Part; provided, however, that such security is in connection with a project rehabilitated pursuant to this Part, and the terms of the financing or any refinancing have been approved by HUD. It is the Owner's responsibility to request such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment that HUD is requested to approve. Where the methods and terms of financing require, the Contract Rents may be reduced in accordance with Sec. 1277.103(f)(2).

(2) Any pledge of the Agreement, Contract, or ACC, or payments thereunder, shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.

(3) In the event of foreclosure, including foreclosure by HUD, and in the event of assignment or sale agreed to by HUD or made to HUD, housing assistance payments shall continue in accordance with the terms of the Contract.

(r) *Security and utility deposits.* (1) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner must comply with all State and local laws re-

garding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

(s) *Establishment of income limit schedules; 30 percent occupancy by very low-income families.* (1) HUD will establish schedules of income limits for defining Lower-Income Families and Very Low-Income Families.

(2) In the initial renting of Contract units, the Owner shall lease at least 30 percent to Very Low-Income Families and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families, provided that if this requirement cannot be met because of Families already residing in the property to be rehabilitated, HUD may adjust the percentage of Very Low-Income Families to the extent that it is compensated for by higher than 30 percent provision for such Families in other projects.

(t) *Establishment of amount of housing assistance payments.* The amount of housing assistance payment on behalf of an Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (1) not less than 15 percent nor more than 25 percent of the Family's gross income and (2) the Gross Rent, taking into consideration the income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family, except that, in the case of a large (6 or more minors) Very Low-Income Family or a very large (8 or more minors) Lower-Income Family or a Family with exceptional medical or other expenses, the amount of the housing assistance payment shall be the difference between 15 percent of the Family's gross income and the Gross Rent.

(u) *Responsibilities of the Owner.* The Owner shall be responsible (subject to post-review or audit by HUD or the PHA, as the case may be) for management and maintenance of the project. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions including the taking of applications, selection of Families including verification of income and other pertinent requirements, and determination of eligibility and amount of Family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of Family rents;

(5) Termination of tenancies, including evictions;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexaminations of Family income, composition, and extent of exceptional medical or other unusual expenses, and

redeterminations, as appropriate, of the amount of Family contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(8) Redeterminations of amount of Family contribution and amount of housing assistance payment as a result of an adjustment by HUD of any applicable Allowance for Utilities and Other Services in accordance with HUD-established schedules and criteria; and

(9) Compliance with equal opportunity requirements.

Subject to HUD approval, any private Owner may contract with any private or public entity to perform such services for a prescribed fee, provided that such contract shall not shift any of the Owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (for example, a PHA in the case of a Private-Owner/PHA Project) may contract to perform management and maintenance of the project. (See, however, Sec. 1277.103(y) which permits conversion of a Private-Owner/PHA Project to a Private-Owner Project.)

(v) *Responsibility for Administration of Contract.* (1) In the case of a Private-Owner Project or a PHA-Owner Project, HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(2) In the case of a Private-Owner/PHA Project, the PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following shall apply:

(i) HUD shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract; and

(ii) In the event HUD determines that the Owner is in default with respect to any or all of his obligations, HUD shall have the right to take direct action (as if HUD were the party to the Contract primarily responsible for its administration) to enforce any or all available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the Contract, and termination of the Contract in whole or in part.

(w) *Separate project requirement.* (1) In the case of a Private-Owner Project or a PHA-Owner Project, each Agreement and Contract shall constitute a separate project.

(2) In the case of a Private-Owner/PHA Project, such project may not include any other type of Section 8 assistance, shall be processed with a separate ACC List and ACC Part I and shall be assigned a separate project number. All substantial rehabilitation units to be placed under a single Contract shall comprise a separate project. However, the field office director may designate as a single project the units to be covered by two or more such Contracts for sub-

stantial rehabilitation projects where:

(i) The units are placed under ACC on the same date; and

(ii) Such consolidation is necessary in the interest of administrative efficiency.

(x) *Conversion of Private-Owner Project to Private-Owner/PHA Project.* HUD may request the Owner of a Private-Owner Project and an appropriate PHA to agree, if they are willing, to a conversion of any such project to a Private-Owner/PHA Project if HUD determines that such conversion would promote efficient project administration.

(y) *Conversion of Private-Owner/PHA Project to Private-Owner Project.* The private Owner and the PHA, in the case of a Private-Owner/PHA Project, may request HUD to agree to a conversion of any such project to a Private-Owner Project. HUD shall agree to such conversion if it determines it to be in the best interest of the project.

Subpart B—Project Development and Operation

§ 1277.201 Allocations of contract authority to field offices.

HUD will allocate to field offices contract authority for the section 8 Housing Assistance Payments Program for metropolitan areas and for non-metropolitan areas in conformance with section 213(d) of the HCD Act.

§ 1277.202 Program mix (new construction, substantial rehabilitation existing housing).

Each field office shall, after considering the contents of any Local Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, determine the number and types of units to be advertised for new construction and for substantial rehabilitation, and to be made available for existing housing. The field office will also determine an appropriate schedule for advertising for Preliminary Proposals—Substantial Rehabilitation.

§ 1277.203 Invitations for preliminary proposals.

(a) *Publication.* The HUD field office shall initiate implementation of its program with respect to substantial rehabilitation by publishing Invitations for Preliminary Proposals—Substantial Rehabilitation in accordance with the schedule established by the field office. Such publications shall be at least once a week on the same day or days of each of two consecutive weeks in a newspaper(s) of general circulation serving the area(s) for which proposals are desired. As promptly as possible, HUD will also notify minority media, business concerns included in HUD's registry of section 3 businesses for the applicable political jurisdictions, minority organizations involved in housing and community development and fair housing groups. In addition, to the extent feasible, HUD will notify appropriate PHA's, the chief executive officer of the appropriate

unit(s) of general local government, trade journals, and other non-minority media. Copies of each Invitation shall be available in the HUD field office.

(b) *Contents of invitation.* The Invitation shall state the geographic area or areas in which the housing is to be rehabilitated; the number of units in each area; the deadline for receipt of Preliminary Proposals by HUD; such other basic information as the field office may wish to specify; and the fact that detailed information, guidelines, standards and procedures are contained in a Rehabilitation Program Packet which may be obtained by interested parties from the field office. The Invitation shall also state that Preliminary Proposals may be submitted by private Owners or PHA Owners for direct contracting with HUD, or by PHAs on behalf of private Owners with whom the PHA proposes to contract pursuant to an ACC with HUD.

(c) *Deadline for receipt of preliminary proposals.* The deadline (date and time) for receipt of Preliminary Proposals by HUD shall allow a reasonable time but, in any event, no less than 35 calendar days after the date of the first publication in a newspaper of general circulation.

§ 1277.204 Contents of rehabilitation program packet.

The Rehabilitation Program Packet shall:

(a) Include a copy of the applicable regulations, required HUD forms, and HUD standards.

(b) Include the following information for each geographic area specified in the Invitation.

(1) The number of units for elderly and nonelderly occupancy and the number to be specially designed for elderly (including handicapped) occupancy.

(2) The number of units by unit size (bedrooms per unit) and the fact that a proposal may be for any number of units up to that amount.

(3) The type of housing, if any, which is unacceptable (e.g., high-rise elevator structures for Families with children, where HUD has determined that such housing is inappropriate).

(4) Special requirements, if any, as to location and density; and as to New Communities where substantial rehabilitation is involved.

(5) Any special requirements for housing for the elderly (including the handicapped) pursuant to section 209 of the HCD Act, and any special requirements for the handicapped pursuant to the standards established by HUD under Public Law 90-480.

(6) Any special requirements or restrictions that may be necessary for compliance with provisions of the Local Housing Assistance Plan, if any, and the name, address, and title of the official of the unit of general local government to whom inquiries may be made concerning such Plan.

(7) The specific management and maintenance services required to be provided by the Owner. Such services shall include all services typically provided

in the area for the type of housing contemplated.

(8) The Fair Market Rents and the fact that rents requested by the Owner must be determined by HUD to be reasonable in accordance with sec. 1277.103(f).

(9) The maximum initial term of the Contract and the fact that the maximum approvable term, including renewals, will be determined in accordance with sec. 1277.103(g).

(c) Include statements as to:

(1) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units); an assurance of compliance with Title VI of the Civil Rights Act of 1964; compliance with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto; and certifications required pursuant to Executive Order 11246.

(2) HUD regulations and other requirements implementing section 3 of the Housing and Urban Development Act of 1968, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(3) HUD relocation requirements.

(4) HUD requirements implementing the National Environmental Policy Act.

(5) Governmental requirements implementing the Clean Air Act and the Federal Water Pollution Control Act.

(6) HUD requirements implementing the Flood Disaster Protection Act of 1973.

(7) The requirement, if a project will contain nine or more Contract units, that all laborers and mechanics employed in the development of the project shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act.

(8) The prescribed HUD form showing the identity of the Owner, the rehabilitator, the architect (if any), and the managing agent (if any); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest.

(9) The requirement that the Owner submit evidence of capability to provide the required management and maintenance services or, if the proposal is for 15 or more units, evidence of management capability and a proposed management plan and a certification by the Owner and the managing agent, if any, in a format acceptable to HUD.

(10) The fact that if the Owner intends to pledge, or offer as security for any loan or obligation, an Agreement or Contract, he is responsible for submitting to HUD a request for such approval in sufficient time before he needs the financing to permit review of the method

and terms of the financing and the instrument of pledge, offer or other assignment; and that if the request is made after approval of the Final Proposal, the Contract Rents may be reduced where the methods and terms of financing require. (See § 1277.103(q).)

(11) Other requirements which the HUD field Office determines to be necessary.

(12) Where copies of HUD Minimum Design Standards for Rehabilitation for Residential Properties and any other applicable standards, guidelines and criteria may be obtained.

(13) The number of copies of the Preliminary Proposal to be submitted to HUD.

(14) The fact that HUD may determine not to select or approve any or all Preliminary Proposals submitted.

§ 1277.205 Contents of preliminary proposal.

Each Preliminary Proposal shall include or indicate the following:

(a) The address(es) of the housing proposed to be rehabilitated and a neighborhood map showing the location(s) of the housing and the racial composition of the neighborhoods(s).

(b) A copy of the option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the property to be rehabilitated (however, only the proposed price is required for a New Communities project).

(c) A description of the housing as is, including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, and special amenities or features, if any; exterior and interior photos; and sketches of the interior showing dimensions.

(d) A description of the proposed rehabilitation covering each basic element (e.g., roof, exterior walls, porches and steps; interior walls, ceilings and floors; kitchen and bathroom facilities and equipment; plumbing, heating and electrical equipment; landscaping; etc.) indicating the nature of the work to be done on each element. If alteration, renovation or remodeling is indicated, a description of such work and sketches showing layout after completion of rehabilitation.

(e) A statement as to whether or not the services of a registered architect will be utilized for preparation of final working drawings and specifications.

(f) The Contract Rent per unit, by size and structure type.

(g) The equipment to be included in the Contract Rent.

(h) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not included in the Contract Rent, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(i) The proposed term of the Contract (including all renewals) and justification for such term in accordance with Sec. 1277.103(g).

(j) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the provisions of the Local Housing Assistance Plan, if any.

(k) Whether the proposed rehabilitation will displace site occupants. If so, the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status, and whether they are owners or renters), and shall show that there is a feasible plan for relocation and how necessary relocation payments, if any, will be funded.

(l) Equal Employment Opportunity Certification using the prescribed form.

(m) The identity of the Owner, rehabilitator (if known) and architect (if applicable and identity is known; the qualifications and experiences of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(n) Whether the Owner intends to provide management services or to contract with a managing agent. In the latter case, provide the identity of the managing agent, if known, and the other information as specified in paragraph (m) of this section.

(o) The proposed method of financing and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see Sec. 1277.103(q)). If the Owner proposes to utilize FHA mortgage insurance, the prescribed FHA form should be completed and submitted with the Preliminary Proposal.

(p) Whether the Owner proposes to limit the number of assisted units to 20 percent of the dwelling units in the project.

§ 1277.206 Submission of preliminary proposals.

(a) Preliminary Proposals shall be submitted to HUD on or before the published deadline date and time for opening, in the number of copies specified in the Rehabilitation Program Packet. Proposal documents shall be sealed in an inner envelope marked "Sealed Proposal—Open on [date and time specified in the Invitation]". This sealed proposal shall be submitted in an outer envelope or package which shall show the name of the locality, be addressed to the HUD field office, and be clearly and distinctively marked "Section 8 Housing Assistance Payments Program—Substantial Rehabilitation Preliminary Proposal".

(b) Submission of Preliminary Proposals shall be by hand delivery or certified mail. Any Preliminary Proposal received by HUD after the deadline date and time shall not be accepted but shall be returned unopened. No Preliminary Proposal shall be opened by HUD until the deadline.

§ 1277.207 Proposals involving HUD-FHA mortgage insurance.

(a) *Advance mortgage insurance processing.* This paragraph (a) applies to Owners who apply for HUD-FHA mortgage insurance prior to the submission of a Preliminary Proposal under this Part. Such an Owner may apply for a Feasibility Letter, a Conditional Commitment, or a Firm Commitment for mortgage insurance by submitting an application on the prescribed form with supporting exhibits and the required fee. Such an application will have to meet the marketability test without reliance upon housing assistance payments under this Part, or, in the alternative, approval for mortgage insurance shall be conditioned upon subsequent approval of a section 8 proposal for the same project. If a Feasibility Letter, Conditional Commitment, or Firm Commitment, whichever is applicable, is issued, and if prior to expiration thereof the Owner submits a Preliminary Proposal under this Part which is consistent with the proposal as approved for mortgage insurance, such proposal will nevertheless be subject to review and evaluation in accordance with the procedures under this Part; however, if the Preliminary Proposal is selected in accordance with the procedures under this Part, further processing will be coordinated in accordance with paragraph (b) of this section to the extent applicable, and the rents which were approved for mortgage insurance purposes will be accepted for purposes of such Preliminary Proposal provided that they are otherwise approvable in accordance with this Part.

(b) *Concurrent processing.* The provisions of this paragraph (b) apply where the Preliminary Proposal indicates an intention to finance a project with a HUD-FHA insured mortgage. Such a Preliminary Proposal will not be selected under this Part unless it meets the market and site acceptability criteria of the applicable mortgage insurance program except as modified by this paragraph. The processing of such a proposal for mortgage insurance will be integrated with the section 8 review and evaluation process. Selection by HUD of such a Preliminary Proposal for preparation of a Final Proposal will be made only where HUD has also determined that the proposal will qualify for mortgage insurance subject to a satisfactory demonstration by the Owner of his capability to complete the projects and subject to subsequent determinations of "as is" value, the loan amount and credit approval. A proposed project which qualified as "substantial rehabilitation" under section 8 may fail to qualify as substantial rehabilitation under mortgage insurance programs (because of the different definition of "substantial rehabilitation"); nevertheless, such a proposal would qualify for mortgage insurance as "existing construction," and mortgage insurance commitments will be conditioned upon the satisfactory completion of all rehabilitation work.

(1) A section 8/HUD-FHA mortgage insurance project will be required to meet

the marketability test of the applicable mortgage insurance program; provided, however, that the number of units in the proposal for which housing assistance payments are to be made available will be considered as an addition to the effective demand for unassisted rental units. As in the case of any other market analysis for market rate unassisted mortgage insurance programs, the supply of suitable vacant existing units, units under construction, and units in process must be subtracted from the estimate of total effective demand. Consequently, section 8/HUD-FHA insured units could be added to a market in which supply and demand are in equilibrium or in which there is an undersupply of rental units, but could not be added to a market in which there is an oversupply of rental units in the same competitive range of market rents as the proposed section 8/HUD-FHA insured project.

(2) After selection of a Preliminary Proposal which involves HUD-FHA mortgage insurance the Owner will be required to submit, with the Final Proposal, an application for HUD-FHA Conditional Commitment with fee (two dollars per thousand dollars of mortgage requested) under the applicable mortgage insurance program. Such Final Proposals will not be approved under Section 8 unless they also qualify for issuance of a HUD-FHA Conditional Commitment under the applicable mortgage insurance program. The HUD notification of approval of the Final Proposal will be accompanied by a HUD-FHA Conditional Commitment for HUD-FHA mortgage insurance. The Owner's acceptance of HUD's notification of approval of the Final Proposal will constitute concurrent acceptance of the conditions and terms of the HUD-FHA Conditional Commitment for mortgage insurance.

(3) The rents of those units scheduled for assisted occupancy, when projected for purpose of determining a mortgage limitation based on the debt service criterion, shall be the Contract Rents set forth in the approved Final Proposal.

(4) Prior to the execution of the Agreement, the Owner will be required to obtain a Firm Commitment for HUD-FHA mortgage insurance. This will require the submission of an application for a Firm Commitment, with an additional fee (one dollar per thousand dollars of the mortgage requested), upon acceptance of HUD's notification of approval or the submission of the architect's certification accompanying the working drawings and specifications in accord with § 1277.211.

(c) *Delayed Mortgage Insurance Processing.* Where an Owner does not indicate in his Preliminary Proposal that he intends to utilize HUD-FHA mortgage insurance and applies for HUD-FHA mortgage insurance after HUD approval of the Preliminary Proposal under this Part, he risks (1) having his approved proposal rejected for HUD-FHA mortgage insurance and (2) having lower rents approved under the mortgage insurance program than the rents set forth in the approved proposal under this Part.

§ 1277.208 Screening and evaluation of preliminary proposals.

(a) *Initial Screening.* Promptly after the deadline date for receipt of Preliminary Proposals, HUD will screen all the proposals to determine which are complete and responsive and eligible for further processing. Where a proposal lacks one or more of the required elements (see Sec. 1277.205), or is clearly not responsive to the conditions of the Invitation and the Rehabilitation Program Packet, the HUD field office shall give the Owner the shortest reasonable time (generally not to exceed 10 days) to remedy the deficiency.

(b) *A-95 Clearance: Notice to Unit of General Local Government.* (1) Promptly after the deadline date for receipt of proposals (or after the appropriate later date for proposals completed pursuant to paragraph (a) of this section), the HUD field office will, for each complete and responsive Preliminary Proposal which is subject to A-95 clearance, send a copy of the proposal to the appropriate A-95 Clearinghouse for review, inviting a response within 34 days from the date of the letter of transmittal.

(2) Within 10 working days after the deadline date for receipt of proposals (or after the appropriate later date for proposals completed pursuant to paragraph (a) of this section), the HUD field office will forward, under cover of a letter on the appropriate prescribed form, a copy of each complete and responsive Preliminary Proposal to the chief executive officer (or such designee as such officer may designate in writing to the HUD field office) of the unit of general local government in which the proposed housing is to be located. The cover letter will invite a response within 30 days from the date the letter and copy of the proposal are received.

(c) *Evaluation of preliminary proposals by HUD.* HUD may begin its evaluation promptly after the deadline date, but no selection or ranking may be completed until the response periods referred to in paragraph (b) of this section have ended. Each Preliminary Proposal will be evaluated and ranked by HUD on the basis of all pertinent factors under this Part including, the best combination of rent, site, design and previous experience of the proposed Owner and on the basis of comments, if any, received during the response periods from the appropriate A-95 Clearinghouse and the unit of general local government.

(d) *Selection (where approvable proposals do not exceed number by size) of units advertised.* For each geographic area HUD will determine which Preliminary Proposals, in its judgment, can be developed into Final Proposals meeting the requirements of the Rehabilitation Program Packet. If the units covered by such Preliminary Proposals could all be accommodated in the number of units (by unit size) specified in the Invitation, HUD will request all Owners of acceptable Preliminary Proposals to prepare Final Proposals in accordance with § 1277.209.

(e) *Selection where approvable proposals exceed number (by size) of units advertised.* If the units covered by acceptable Preliminary Proposals cannot all be accommodated by the number of units (by unit size) specified in the Invitation, HUD will proceed as follows:

(1) Proposals consisting of projects to be developed entirely or predominantly for the elderly shall be listed in rank order and a second rank listing shall be established for projects to be developed entirely or predominantly for family housing.

(2) With respect to the listing of proposals for elderly housing, the HUD field office will identify for selection the highest ranking proposals in descending order which will most nearly provide the number of units of elderly housing called for in the Invitation.

(3) With respect to the listing of proposals for family housing, the HUD field office will identify for selection the highest ranking proposals in descending order which collectively will most nearly provide the number and sizes of units of family housing called for in the Invitation; provided however that if there is a Preliminary Proposal for the rehabilitation of more than 50 units of family housing which indicates that assistance will be limited to 20 percent or less of the units to be rehabilitated, this proposal shall be given priority over the lowest ranking proposal(s) identified for selection which is for more than 50 units and which is for generally the same number and sizes of units.

(4) The field office shall determine whether the combined results of the tentative selections from both listings would exceed the number and sizes of units called for in the Invitation. If so, the field office shall make such revisions in the tentative selections as it may determine to be necessary.

(f) *Use of residual units.* For any residual number of units, HUD may publish another Invitation for Proposals, but this shall not delay the further processing of those Preliminary Proposals submitted in response to the prior Invitation that have been selected as a result of the prior Invitation.

(g) *Notification of selection.* (1) With respect to those Preliminary Proposals which have been selected in accordance with this section, HUD will notify the Owners, on a prescribed form, and request them to submit within a reasonable time (to be specified in the notification) a Final Proposal in accordance with the requirements of the provisions of § 1277.209. The notification shall specify:

(i) The Contract Rents that will be acceptable to HUD where these are lower than the Contract Rents proposed by the Owner, and the reason for the reduction;

(ii) The term of the Contract that will be acceptable to HUD where it is shorter than the term proposed by the Owner, and the reason for the shorter term;

(iii) That the services of a registered architect must be utilized where HUD has determined that the nature and ex-

tent of the rehabilitation requires the utilization of such services;

(iv) The estimate of the amount of relocation payments, where applicable; and

(v) Other special conditions or requirements, if any.

(2) The notification will request the Owner to return a copy of the notification with an indication of his acceptance thereof by a specified date. If the Owner does not accept the notification by the date specified, HUD may rescind the notification and select another approvable proposal.

(h) *Notification of nonselection.* Owners whose Preliminary Proposals were not selected by HUD shall be sent a letter notifying them of such determination.

§ 1277.209 Final proposals.

(a) *Contents of Final Proposal.* Each Final Proposal shall indicate or include the following:

(1) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the property to be rehabilitated (however, only the proposed price is required for a New Communities project).

(2) A description of the proposed rehabilitation covering each basic element (e.g., roof, exterior walls, porches and steps; interior walls, ceilings, and floors; kitchen and bathroom facilities and equipment; plumbing, heating and electrical equipment; landscaping; etc.) indicating the nature of the work to be done on each element and the grade and quality of the work, materials and equipment. If alteration, renovation or remodeling are indicated, preliminary drawings and plans and outline specifications on the prescribed form.

(3) The Contract Rent per unit, by size and structure type.

(4) The equipment to be included in the Contract Rent.

(5) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not so included, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(6) In the case of a PHA-Owner Project, a statement that (i) the PHA will undertake liability for and provide the funding of all relocation payments under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or (ii) other commitments, which the Owner believes to be satisfactory to HUD, have been made for the funding of such payments. In the latter case, the PHA shall specify such other commitments. (In the case of a Private-Owner Project or a Private-Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

(7) The proposed term of the Contract (including all renewals) and justification for such term in accordance with § 1277.103(g).

(8) Submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units), a signed assurance of compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and certifications required pursuant to Executive Order 11246.

(9) Submissions as required by HUD regulations and other requirements pursuant to section 3 of the Housing and Urban Development Act of 1968.

(10) The identity of the Owner, rehabilitator, architect (if applicable) and managing agent (if known); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(11) Submission of evidence of management capability and a proposed management plan and a certification by the Owner and the management agent, if any, in a format acceptable to HUD; or, if the proposal is for less than 15 units, evidence of capability of providing the required management and maintenance services. If the Owner proposes to contract with another entity, including a PHA, for management and/or maintenance services for the project, he shall include a copy of the proposed contract(s).

(12) Submission of the form of Lease the Owner proposes to use, which shall be in accordance with § 1277.218(c).

(13) The proposed method of financing and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see Sec. 1277.103(q)). If the Owner intends to utilize FHA mortgage insurance, an application for a Conditional Commitment on the prescribed form shall be completed and submitted with the prescribed fee with the Final Proposal.

(14) Evidence that the proposed rehabilitation is permissible under the applicable zoning, building, housing and other codes, ordinances or regulations; or a statement of the proposed action to make the rehabilitation permissible and that such action will be successfully completed prior to the Owner's acceptance or the architect's certification (if required) pursuant to § 1277.211(b).

(15) The anticipated time required for completion of the rehabilitation after the Agreement is signed (if the project is to be completed in stages, identification of the units comprising each stage and the estimated dates for commencement and completion of each stage).

(b) *Consistency with preliminary proposal.* The Final Proposal shall be consistent with the Preliminary Proposal. Any material deviations from the Preliminary Proposal in the Final Proposal will cause reconsideration by HUD of such Final Proposal and may result in its rejection.

§ 1277.210 Evaluation of final proposals.

(a) *Evaluation of final proposals by HUD.* Each Final Proposal will be evaluated by HUD to determine that the provisions of this Part have been complied with and that such Final Proposal is consistent with the Preliminary Proposal.

(b) *Clarifications or modifications.* HUD may request clarification of individual items, additional information, or modifications of the Final Proposal.

(c) *HUD determination.* HUD shall notify the Owner (and the PHA, if applicable) as to whether the Final Proposal is:

(1) Approved.
(2) Approvable only if specified deficiencies are corrected and that HUD will approve the Final Proposal if it receives within a specified time evidence of such necessary corrections.

(3) Not approved. If a Final Proposal is not approved or if the conditions for approval under paragraph (c) (2) of this section are not met, HUD shall so advise the Owner and may request the preparation of a Final Proposal(s) with respect to the highest ranking Preliminary Proposal(s) not previously selected, or may issue another Invitation for Preliminary Proposals.

(d) *Notification.* The appropriate A-95 Clearinghouses and the unit of general local government shall be notified by HUD of its final action.

§ 1277.211 Owner's acceptance of notification and submission of architect's certification.

(a) *Owner's acceptance.* Upon receipt by the Owner of the notification of approval of the Final Proposal, the Owner shall return to HUD a copy indicating his acceptance within the time prescribed in such notification (copy to the PHA, if applicable). If the Owner does not accept the notification by the date specified, HUD may rescind the notification and proceed in accordance with § 1277.210(c) (3).

(b) *Architect's certification.* (1) If the services of a registered architect are to be used, HUD may not enter into an Agreement (or, where applicable, an ACC and an Agreement) until after the Owner has submitted to HUD the architect's certification on the prescribed form. Such certification shall be made by the architect responsible for the preparation of the working drawings and specifications.

(2) The architect's certification shall state that, to the best of the architect's knowledge, belief, and professional judgment, (i) the working drawings and specifications are consistent with the approved Final Proposal (including any modifications required by HUD in its review of the Final Proposal), and (ii) the proposed rehabilitation in accordance with these plans and specifications is permissible under the applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by

any waivers obtained from the appropriate officials. This certification shall also cover compliance with the appropriate HUD Minimum Designed Standards for Rehabilitation for Residential Properties and other standards, guidelines and criteria applicable under this Part.

(3) One copy of the certified working drawings and specifications shall be submitted with the architect's certification to HUD, which shall retain it and any changes approved by HUD for at least three years from the date of acceptance of the project; provided, however, that receipt and retention by HUD of these working drawings and specifications shall not denote or constitute HUD review or approval of such drawings or specifications.

(4) If the Owner fails to submit the certification by the date specified in the notification, HUD shall rescind the notification (and may proceed in accordance with § 1277.210(c) (3)) unless it determines that a reasonable extension of time should be granted.

§ 1277.212 Annual contributions contract and agreement (private-owner/PHA projects).

(a) *Preparation of ACC.* After receipt of the accepted notification (and, where required, the architect's certification with the working drawings and specifications), the HUD field office shall prepare the ACC, shown as Appendix III. The ACC shall be transmitted to the PHA for execution and returned to HUD. This transmittal shall advise the PHA that it must simultaneously submit for HUD approval its Initial Estimate of Required Annual Contributions (Preliminary Costs) and an Estimate of Total Required Annual Contributions (see § 1277.213).

(b) *Preparation of Agreement.* The Agreement shall be prepared by the HUD field office at the time the ACC is prepared (see § 1277.214), and shall conform to the prescribed form shown as Appendix IV. The Agreement shall include all required information and required attachments.

(c) *Execution of ACC and Agreement.* After receipt of the PHA-executed ACC, accompanied by the Estimates of Required Annual Contributions, HUD shall review the Estimates and, if approved, execute the ACC. HUD shall then transmit a fully executed copy of the ACC to the PHA, together with four copies of the unexecuted Agreement. After execution of the Agreement by the PHA and the Owner, all copies shall be returned by the PHA to HUD for approval. HUD shall return three copies to the PHA, retaining one for its records.

§ 1277.213 Submission of estimates of required annual contributions (private-owner/PHA projects).

(a) *Initial submission.* An allowance may be provided for preliminary costs incurred by the PHA prior to the beginning of the first fiscal year. When the ACC is executed by the PHA, it shall sub-

mit an Initial Estimate of Required Annual Contributions (Preliminary Costs) together with an Estimate of Total Required Annual Contributions on the prescribed forms. This submission includes estimates of costs of administration and non-expendable equipment up to the beginning of the first fiscal year.

(b) *First fiscal year submission.* Not earlier than 150 and not later than 90 days prior to the estimated date of the beginning of the first fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) covering the estimated amount required for the first fiscal year for housing assistance payments and for the fee for administration together with an Estimate of Total Required Annual Contributions.

(c) *Subsequent fiscal year submissions.* Not earlier than 150 and not later than 90 days prior to the beginning of each subsequent fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) and an Estimate of Total Required Annual Contributions, with supporting documentation, for any requested changes in the amount of housing assistance payments and the fee for administration.

(d) *Revisions of estimates.* Any of the above Estimates may be revised to reflect changes in circumstances and available data.

(e) *HUD approval.* All Estimates of Required Annual Contributions and any revisions thereto submitted by the PHA shall be subject to HUD approval.

§ 1277.214 Preparation and Execution of agreement (private-owner and PHA-owner projects).

After receipt of a copy of the accepted notification (and, where required, the architect's certification and the working drawings and specifications), the HUD field office shall prepare the Agreement in the prescribed form shown as Appendix I. The Agreement shall include all required information and required attachments. HUD shall transmit to the Owner three copies of the unexecuted Agreement. After the Owner executes all copies of the Agreement, he shall return them to HUD. HUD shall execute the Agreement, returning one copy to the Owner and retaining two for its records.

§ 1277.215 Rehabilitation period.

(a) *Timely performance of work.* After execution of the Agreement, the Owner shall promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, and/or completed, HUD (or the PHA with HUD approval, as appropriate) reserves the right to rescind the Agreement, or take other appropriate action.

(b) *Delays.* Although extensions of time may be granted for the reasons specified in the Agreement, no increases in Contract Rents may be granted on that account.

(c) *Changes.* The Owner shall submit for HUD approval any changes from the

approved Final Proposal which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior HUD approval, HUD may determine that Contract Rents shall be reduced or that the Owner shall remedy the deficiency as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

(d) *Inspection of HUD-FHA insured projects.* For projects financed with HUD-FHA insured mortgages, required HUD inspection procedures shall be followed including compliance with equal opportunity requirements.

(e) *Equal opportunity review.* Equal opportunity review may be conducted with any scheduled HUD inspection or at any other time deemed advisable by HUD.

(f) *Commencement of marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of the date of the commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed (see § 1277.217), the Owner will be required to submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units, pursuant to § 1277.103(e)(2), only if he has fully complied with the requirements of that section and of this paragraph.

(g) *Management certification.* Prior to acceptance of the project by HUD, the Owner must certify in writing that there has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by HUD in accordance with the Agreement.

(h) *Labor standards certification.* Prior to acceptance by HUD of any project consisting of nine or more Contract units, the Owner must certify in writing that he has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage-rates and that to the best of his knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, HUD, or the PHA (if applicable), the Owner shall be required to place a sufficient

amount in escrow, as determined by HUD, to assure such payments.

§ 1277.216 Project completion.

(a) *Notification of completion.* The Owner shall notify HUD (with a copy to the PHA in the case of a Private-Owner/PHA Project) when the work is completed and shall submit to HUD the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* Completion of the project shall be evidenced by furnishing HUD with all of the following:

(1) A certification by the Owner that (i) the property was treated and is in compliance with applicable HUD Lead Based Paint regulations 24 CFR 35, (ii) if the property was constructed prior to 1950, the Family upon occupancy will receive the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained.

(2) A certificate of occupancy and/or other official approvals necessary for occupancy.

(3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) All work has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(4) A certification (if working drawings and specifications were prepared and certified to by a registered architect) by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified by the architect).

(iv) The project has been rehabilitated in accordance with applicable zon-

ing, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(c) *Inspection.* (1) Within ten working days of the receipt of the Owner's notification of project completion, a HUD representative (accompanied by a PHA representative, if applicable) shall inspect the project and review the evidence of completion listed in paragraph (b) of this section. Such inspection shall be sufficient to enable the HUD inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, in the basis of such inspection, the project has been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certification of the Owner or the design architect or the inspecting architect. As promptly as possible, HUD shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes HUD's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

(d) *Acceptance of project.* If HUD determines that the project is not acceptable under paragraph (c) (1) of this section, the following shall apply:

(1) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of HUD, HUD may, upon 30 days notice, terminate or require termination of the Contract or exercise its other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but HUD determines that: (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued, (ii) the project is in good and tenantable condition, and (iii) the project has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies or the project may be accepted subject to a specified reduction of the Contract Rents as determined by HUD.

(3) If HUD determines that the project is not acceptable under paragraphs (d) (1) or (d) (2) of this section, HUD shall determine: (i) whether the defects or deficiencies can be corrected, and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner thereupon shall be notified of HUD's determinations under paragraphs (d) (3) (i) and (d) (3) (ii) of this section, and, if he agrees to

comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

(e) *Completion in stages.* If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§ 1277.217 Execution of Housing Assistance payments contract.

(a) Upon acceptance of the project by the Government pursuant to §§ 1277.215 and 1277.216, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in § 1277.215(f), and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished HUD in the case of a Private-Owner/PHA project.

§ 1277.218 Project operation.

(a) *Compliance with Equal Opportunity requirements.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) *Eligibility, selection and admission of families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family, in accordance with schedules and criteria established by HUD.

(2) For every family that wishes to apply for admission, the Owner and the applicant shall complete and sign the form of application prescribed by HUD, except that if there are no vacant units and the Owner's waiting list is such that there would be an unreasonable length

of time before the applicant could be admitted, the Owner may advise the applicant that the Owner is not accepting applications for that reason. The Owner shall retain copies of all completed applications together with any related correspondence for three years. For each Family selected for admission, the Owner shall submit one copy of the completed and signed application to the HUD field office (in the case of Private-Owner/PHA Projects, the Owner simultaneously shall send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted Family until after this copy has been received by the HUD field office.

(3) If the Owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.

(4) If the Owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in conformity with the provisions of this Part.

(5) Records on applicant families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.

(6) In the case of a PHA-Owner project, (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall send the applicant a letter notifying him of the determination and the reasons and that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the letter, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

(c) *Lease requirements.* The Lease shall contain all required provisions specified in paragraph (c) (2) of this section and none of the prohibited provisions listed in paragraph (e) (3) of this section and shall otherwise conform to

the form of Lease included with the Owner's approved Final Proposal.

(1) *Term of lease.* The term of the Lease shall be generally for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(2) *Required provisions.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

"ADDENDUM TO LEASE

"The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

"a. The total rent shall be \$_____ per month.

"b. Of the total rent, \$_____ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and \$_____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, or by reason of adjustment by HUD of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with HUD-established schedules and criteria and shall be effective as of the date stated in a notification to the Lessee.

"c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

"d. The Lessor shall provide the following services and maintenance: [Here insert the complete list as contained in the approved Final Proposal.]

"Lessor _____
By _____
Date _____
Lessee _____
Date _____"

(3) *Prohibited provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(i) *Confession of judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(ii) *Distrain for rent or other charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(iii) *Exculpatory clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(iv) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(v) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(vi) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

(vii) *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(viii) *Tenant chargeable with costs of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

(d) *Termination of tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in § 1277.103 (e) (3) (ii).

(e) *Maintenance, operation and inspections.*—(1) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(2) *Inspection.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by HUD, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form. HUD (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. HUD (or the PHA) will take into account complaints by occupants and any other information coming to its attention in scheduling inspections.

(f) *Units not decent, safe, and sanitary.* If HUD (or the PHA, as appropriate) notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD (or the PHA) may exercise any of

its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and HUD (or the PHA) does not have other Section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if:

(1) The unit is restored to Decent, Safe, and Sanitary condition;

(2) The Family is willing to and does move back to the restored dwelling unit; and

(3) A deduction is made for the expenses incurred by the Family for both moves.

(g) *Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.* Reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the Owner at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of the Family contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD.

(h) *Overcrowded and underoccupied units.* If HUD or the PHA, as the case may be, determines that a Contract unit assisted under this Part is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 1277.103 (e) (3) (i).

(i) *Adjustment of allowance for utilities and other services.* HUD or the PHA, as the case may be, shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the Owner to make promptly a correspond-

ing adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payment.

(j) *Continued family participation.* A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (1) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (2) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit, the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

(k) *Inapplicability of low-rent public housing model lease and grievance procedures.* Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are applicable only to PHA-Owner Projects under the section 8 Housing Assistance Payments Program.

(1) *Reduction of number of contract units for failure to lease to eligible families.* (1) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract units leased or available for leasing by Eligible Families, HUD (or the PHA at the direction of HUD, as appropriate) may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Eligible Families, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

(2) At the end of the initial term of the Contract and of each renewal term, HUD (or the PHA at the direction of HUD, as appropriate) may, by notice to the Owner, reduce the number of Contract units to not less than (i) the number of units under lease or available for leasing by Eligible Families at that time or (ii) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

(3) Any reduction pursuant to paragraphs (1) (1) or (1) (2) of this section shall not preclude subsequent restoration of contract units if contract authority is available and if HUD determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the contract.

§ 1277.219 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled

HUD review or at any time deemed appropriate by HUD.

§ 1277.220 PHA reporting requirements. [Reserved]

APPENDIX I—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT SUBSTANTIAL REHABILITATION PRIVATE-OWNER OR PHA-OWNER PROJECT

Part I

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government") and ----- ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of the substantial rehabilitation of certain projects and land as described in the approved Final Proposal; and

Whereas, the Owner and the Government propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible lower-income families ("Families") to occupy units in said project; and

Whereas, the Owner is also the rehabilitator, or, if the rehabilitator is other than the Owner, the rehabilitator's name is -----

Now Therefore, the parties hereto agree as follows:

1.1 *Significant dates: Contents of Agreement.* a. *Time for Completion of Project.* The time for completion of the project (see Section 1.2a) is ----- calendar days after the effective date of this Agreement.

b. *Date for Commencement of Work.* The date for commencement of work (see Section 1.2b) is -----, 19--

c. *Contents of Agreement.* This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal, including, among other things, evidence of management capability, and, if required, the architect's certification, the Affirmative Fair Housing Marketing Plan, and management program;

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The schedule of completion in stages, if applicable;

Exhibit D: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the Government and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 *Schedule of Completion.* a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit C which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date

stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the Government reserves the right to rescind this Agreement or take other appropriate action. The Owner shall report to the Government the date work was commenced and shall thereafter furnish the Government with periodic progress reports (quarterly unless more frequent reporting is required by the Government).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the Government, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increase in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 *Rehabilitation period.* a. *Changes.* The Owner shall submit for Government approval any changes from Exhibit A which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. The Government may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior Government approval, the Government may determine that Contract Rents shall be reduced or that the Owner shall remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

b. *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify the Government of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the Government of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.6b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

c. *Management Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that there has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the Government in accordance with paragraph a of this Section.

d. *Labor Standards Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that he has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge

¹ Strike this paragraph if the project involves fewer than nine Contract units.

of the Owner or the Government, the Owner shall be required to place a sufficient amount in escrow as determined by the Government to assure payment thereof.

1.4 Project completion. a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidence by furnishing the Government with all of the following:

(1) A certification by the Owner that:

(i) The property was treated and is in compliance with applicable HUD Lead Based Paint regulations 24 CFR 35,

(ii) If the property was constructed prior to 1950, the Family upon occupancy will receive the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained.

(2) A certificate of occupancy and/or other official approvals necessary for occupancy.

(3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) All work has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(4) A certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. *Inspection.* (1) Within ten working days of the receipt of the Owner's notification of project completion, the Government representative shall inspect the project and review the evidence of completion listed in paragraph c of this Section. Such inspection shall be sufficient to enable the Government inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of such inspection, the project has been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certifications of the Owner or the design architect (if required) or the inspecting architect (if required). As promptly as possible, the Government shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes the Government's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

e. *Acceptance of Project.* If the Government determines that the project is not acceptable under paragraph d(1) of this Section, the following shall apply:

(1) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of the Government, the Government may, upon 30 days notice, terminate the Contract or exercise its other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but the Government determines that (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued (ii) the project is in good and tenantable condition, and (iii) the project has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies or the project may be accepted subject to a specified reduction of the Contract Rents as determined by the Government.

(3) If the Government determines that the project is not acceptable under paragraphs e(1) or e(2) of this Section, the Government shall determine: (i) whether the defects or deficiencies can be corrected and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner shall be notified of the Government's determination under (i) and (ii) of this subparagraph and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted. Prior to execution of the Contract, the Government will verify that appropriate corrective action has been taken.

f. *Completion in Stages.* If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 *Execution of housing assistance payments contract.* a. *Time of Execution.* Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed first by the Owner and then by the Government.

b. *Completion in Stages.* If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and

their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. *Unleased Units at Time of Execution.* At the time of execution of the Contract, the Government shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The Government shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract.

d. *Contract Rents.* The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except that in no case may the Initial Contract Rents for units in projects financed with mortgages insured under the National Housing Act exceed the rents approved by the Government in connection with the mortgage insurance for such projects.

e. *No Changes in Contract.* Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with Section 1.3a and paragraph d of this Section.

1.6 *Government Assurance To Owner.* The execution of this Agreement by the Government signifies that the faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract and that funds have been obligated by the Government for such payments.

1.7 *Relocation requirements.*² [Alternative provisions—incorporate alternative 1 or 2, as applicable.]

Alternative 1—For projects which were without site occupants as of the date indicated in this alternative.

The Owner hereby certifies that the site of the project was without occupants as of the date of the Government notification to the Owner requesting the Owner to submit a Final Proposal.

Alternative 2—For projects which do not qualify for alternative 1.

a. *Owner Compliance with Relocation Act.* The Owner agrees to comply with the provisions of sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable Government regulations and requirements issued pursuant thereto.

b. *Relocation Payments Other than by Owner.* The Government has determined that satisfactory commitments have been made for the funding of relocation payments required by sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as follows:

c. *Relocation Payments by Owner.* If paragraph b is inapplicable, the following shall apply:

² Strike this Section in the case of a Private-Owner Project.

² Strike this subparagraph (4) if the work is to be done other than in accordance with working drawings and specifications prepared and certified to by a registered architect.

(1) The maximum potential amount of all relocation payments as estimated by the Government is \$-----.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the Government for the purpose of meeting relocation payments.

(3) The Owner hereby voluntarily undertakes liability for all relocation payments and agrees that if the funds in the escrow account shall prove to be insufficient to meet all such relocation payments he will deposit such additional amounts as the Government determines to be necessary for such purpose.

(4) When the Government determines that there is no longer any potential liability for relocation payments, any balance in the escrow account shall be paid to the Owner.

(5) The Owner agrees to hold harmless and to indemnify the Government for any costs incurred under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in connection with the relocation of site occupants, and the Owner further agrees that the Government shall have the right to be reimbursed for any such costs by withholding from housing assistance payments payable to the Owner.

EFFECTIVE DATE. This Agreement shall be effective as of the date of execution by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in four original counterparts.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

United States of America
Secretary of Housing and
Urban Development

By _____
(Official Title)

Date _____, 19____
OWNER _____
By _____
(Official Title)

Date _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS
PROGRAM

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE
PAYMENTS CONTRACT SUBSTANTIAL REHABILITATION
PRIVATE-OWNER OR PHA-
OWNER PROJECT

PART II

2.1 *Training, employment, and contracting opportunities for businesses and lower-income persons.* a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

*Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$500,000 or less.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

"A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

"E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 *Equal employment opportunity.* a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or

*As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

RULES AND REGULATIONS

other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary

of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 *Cooperation in equal opportunity compliance reviews.* The Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.* In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Prevailing wage rates.* a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United

*Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$100,000 or less.

†As used in Sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike Sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(3) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage

rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of \$10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR Section 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR Section 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance, a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other ap-

prentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 *Submittal of payrolls and related reports.* a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 *Disputes concerning wage rates and classifications of labor.* a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for rulings or interpretation, and such ruling or interpretation shall be final.

2.9 *Wage claims and adjustments.* In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 *Contract Work Hours and Safety Standards Act—overtime compensation.* a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy and liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 *Termination; debarment; subcontracts.* a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR Section 5.6.

b. The Owner shall insert in any subcontracts Sections 2.6 (and with respect to Section 2.6g(2), copies of 29 CFR Sections 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these Sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the resolution of such disputes shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as

necessarily to imply bad faith, or not supported by substantial evidence. In connection with any proceeding under this Section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This Section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 *Interest of members, officers, or employees of Public Housing Agency, members of local governing body, or other public officials.* No member, officer, or employee of the Public Housing Agency ("PHA"), no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.14 *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.15 *Nonassignability.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the Government; *Provided, however,* That in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the Government.

c. The Owner agrees that the approved rehabilitator has not made, and will not make, except with the prior consent of the Government, any assignment or transfer in any form of the rehabilitator's contract to construct the project, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or rehabilitator in whole or in part, by a party holding ten percent or more of the stock of said Owner or rehabilitator, or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or rehabilitator or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an as-

signment, conveyance, or transfer with respect to this Agreement, the project or the rehabilitation contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX II—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—SUBSTANTIAL REHABILITATION—PRIVATE-OWNER OR PHA-OWNER PROJECT

PART I

This Housing Assistance Payments Contract ("Contract") is entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government"), and _____ ("Owner"), pursuant to the United States Housing Act of 1937 ("Act"), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq.

The parties hereto agree as follows:

1.1 *Significant dates and other items; contents of contract.* a. *Effective Date of Contract.* The effective date of this Contract is _____, 19____. [This date shall be no earlier than the date of approval by the Government.]

b. *Initial Term of Contract.* The initial term of this Contract (see Section 1.4a) shall be _____ years [not to exceed five years], beginning with the effective date of this Contract and ending _____, 19____.

c. *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see Section 1.4a) shall be _____ terms of _____ year each [not to exceed five years each].

d. *Maximum Total Term of Contract.* The maximum total term of this Contract, including renewals (see Section 1.4a) shall be _____ years. [Insert 20 years, or 40 years in the case of a project owned by, or financed by a loan or loan guarantee from, a State or local agency.]

e. *Fiscal Year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ [Insert March 31, June 30, September 30, or December 31, as determined by the Government].

f. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.5a) is \$_____ per annum.

g. *Contents of Contract.* This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B: The Project Description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's warranties.* a. *Legal Capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of Work.* The Owner warrants that the project as described in Exhibit B is in good and tenable condition and that all work has been completed in accord-

ance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of the Contract.

1.3 *Families to be housed; Government assistance.* a. *Families To Be Housed.* The Contract Units are to be leased by the Owner to eligible lower-income families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *Government Assistance.* (1) The Government hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the Government upon receipt of funds from the Government for that purpose.

1.4 *Term of Contract; fiscal year.* a. *Term of Contract.* The initial term of this Contract shall be as stated in Section 1.1b. This Contract may be renewed, at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c, provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in Section 1.1d. Renewal shall be automatic unless the Owner notifies the Government, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage; *Provided, however,* that the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1d, plus two years.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1e; *Provided, however,* that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.5a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Maximum housing assistance commitment; project reserve.* a. *Maximum Housing Assistance Commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the Government and the Owner, the Government shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1f; *Provided, however,* that this amount shall be reduced commensurate with any reduction in the number of units under this Contract.

b. *Project Reserve.* A project account shall be established and maintained, in an amount as determined by the Government consistent with its responsibilities under section 8(c)

(6) of the Act, out of amounts by which the maximum Contract commitment stated in paragraph a of this Section exceeds amounts paid under this Contract for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family incomes (see Section 1.8). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.

1.6 Housing assistance payments to owners. a. General. (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will pay the Owner the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The Owner shall be entitled to Contract Rents in accordance with the terms of this Contract. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income, Family composition, extent of exceptional medical or other unusual expenses, or by reason of adjustment by the Government of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with the Government-established schedules and criteria, and shall be effective as of the date stated in a notification of such change to the Family.

b. Vacancies During Rent-up. If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.3b of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the Public Housing Agency ("PHA") and other appropriate sources to refer eligible applicants, and advertising the availability of the units, and (3) has not rejected any eligible applicant, except for good cause acceptable to the Government.

c. Vacancies After Rent-up. (1) If a Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.9b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the Government of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner proposes to evict a Family, he shall not be entitled to any payment

under paragraph c(1) of this Section unless the request for such payment is supported by a certification that (i) he has given such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction is not in violation of the Lease or the Contract or any applicable law.

d. Limitation on Payments for Vacant Units. The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.9b of this Contract).

e. Government Not Obligated for Family Rent. The Government has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.9b of this Contract. The financial obligation of the Government is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. Owner's Monthly Requests for Payments. (1) The Owner shall submit monthly requests to the Government for housing assistance payments. Each such request shall set forth: (i) the name of each family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit; and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling unit is in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed has been previously claimed or paid. (3) If the Owner has received an excessive payment, the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

1.7 Maintenance, operation and inspection. a. Maintenance and Operation. The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the Government determines that the Owner is not meeting any of these obligations, the Government shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

b. Inspection. (1) Prior to occupancy of

any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by the Government, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form.

(2) The Government shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as the Government may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The Government shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections.

c. Units Not Decent, Safe, and Sanitary. If the Government notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the Government may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the Government does not have other Section 8 funds for such purposes, the Government may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. Notification of Abatement. Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The Government shall promptly notify the Family of any such abatement.

e. Overcrowded and Underoccupied Units. If the Government determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the Government will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.6c(1).

1.8 Rent adjustments. a. Funding of Adjustments. Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section up to the maximum total annual housing assistance payments committed under Section 1.5a of this Contract. The provisions of this Contract are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. The Government will take such addi-

tional steps authorized by section 8(c) (6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

b. *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special Additional Adjustments.* Special additional adjustments may be granted, when approved by the Government, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases in the Owner's operating costs demonstrates that such general increase are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall Limitation.* Notwithstanding any other provisions of this Contract, adjustments as provided in this Section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Government.

e. *Incorporation of Rent Adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit.

1.9 *Marketing and leasing of units.* a. *Compliance with Equal Opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. *Security and Utility Deposits.* (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank

account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner must comply with all State and local laws regarding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

c. *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. In the initial renting of the Contract Units, the Owner shall lease at least 30 percent to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

(2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. *Rent Redetermination after Adjustment in Allowance for Utilities and Other Services.* In the event that the Owner is notified of a Government determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. *Processing of Applications and Complaints.* The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Government requirements and shall maintain records and furnish such copies or other information as may be required by the Government.

f. *Government Review; Incorrect Payments.* In making housing assistance payments to Owners, the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.10 *TERMINATION OF TENANCY.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance

payments for any resulting vacancies shall be as set forth in Section 1.6c.

1.11 *REDUCTION OF NUMBER OF CONTRACT UNITS FOR FAILURE TO LEASE TO ELIGIBLE FAMILIES.*

a. *Twelve Months after Effective Date of Contract.* If at any time, beginning six months after the effective date of this Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract Units leased or available for leasing by Families, the Government may on 30 days notice reduce the number of Contract Units to not less than the number of units under lease or available for leasing by Families, plus 10 percent of such number, if that number is 10 or more, rounded to the next highest number.

b. *At End of Initial and Each Renewal Term.* At the end of the initial term of the Contract and of each renewal term, the Government may, by notice to the Owner, reduce the number of Contract Units to not less than (1) the number of units under lease or available for leasing by Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

c. *Restoration of Units.* Any reduction pursuant to paragraphs a or b of this Section shall not preclude subsequent restoration of Contract units if contract authority is available and if the Government determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Owner _____
By _____
(Official Title)

Date _____, 19____
United States of America
and Secretary of
Housing and Urban
Development

By _____
(Official Title)

Date _____, 19____

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A-1.

EFFECTIVE DATE. The effective date of this Contract is _____, 19____. [Insert date which shall be no earlier than the date of execution by the Government.]

OWNER _____
By _____
(Official Title)

Date _____, 19____
United States of America
Secretary of Housing
and Urban Development

By _____
(Official Title)

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED
IN STAGES

STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

EFFECTIVE DATE. The effective date of this Contract is _____, 19____.
[Insert date which shall be no earlier than the date of execution by the Government.]

OWNER _____
By _____
(Official Title)

Date _____, 19____
United States of America
Secretary of Housing and
Urban Development

By _____
(Official Title)

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED
IN STAGES

STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

Effective Date. The effective date of this Contract is _____, 19____. [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____
By _____
(Official Title)

Date _____, 19____
United States of America,
Secretary of Housing
and Urban Development.

By _____
(Official Title)

Date _____, 19____

SECTION 8 HOUSING ASSISTANCE
PAYMENTS PROGRAM

HOUSING ASSISTANCE PAYMENTS
CONTRACT

SUBSTANTIAL REHABILITATION

PRIVATE-OWNER OR PHA-OWNER
PROJECT

PART II

2.1 NONDISCRIMINATION IN HOUSING.

a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin,

be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government and the said Department, either of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 Training, employment, and contracting opportunities for businesses and lower-income persons.¹

a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulation issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of \$50,000 cost, the following clause:

¹ Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are \$500,000 or less.

Employment of project area residents and contractors

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.3 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS. The Owner shall cooperate with the Government

in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant hereto.

2.4 **FLOOD INSURANCE.** If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 **CLEAN AIR ACT AND FEDERAL WATER POLLUTION ACT.** In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 P.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, *et seq.*, the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, *et seq.*, and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 Reports and access to premises and records.

a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the Government.

b. The Owner shall permit the Government or any of its duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests for housing assistance payments.

2.7 DEFAULT BY THE OWNER.

a. A default by the Owner under this Contract shall result if:

- (1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or
- (2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

*Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are \$100,000 or less.

b. Upon a determination by the Government that a default has occurred, the Government shall notify the Owner of the nature of the default, of the actions required to be taken on account of the default (including the curing of the default by the Owner, the abatement of housing assistance payments in whole or in part, where appropriate, or any combination of actions), and of the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the Government, the Government shall take appropriate actions to achieve compliance or to terminate the Contract in whole or in part.

c. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.8 DISPUTES

a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the resolution of such disputes shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any proceeding under this Section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.9 **INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS.** No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.10 **INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.** No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.11 Nonassignability.

a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the Government; Provided, however, That in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the

terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract or the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX III—U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT

This Annual Contributions Contract (ACC) is entered into on ____ day of _____, 19__ (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), which Act as amended to the date of this ACC is herein called the "Act" and the Department of Housing and Urban Development Act (42 U.S.C. 3531), and _____ (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 **Project or Projects.** The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in Section 2.1) pursuant to Section 8 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with Owners (as defined in Section 2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2 Part I and Part II of this Annual Contributions Contract.

(a) Certain provisions of this ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I,

on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3 *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

0.4 *Schedule of Projects.* Attached to this Master Section 8 ACC, as Attachment A, is a list identifying each ACC Part I and ACC Part I amendment by project number, date, and ACC List number and date.

PHA _____
By _____
Date _____
The Government.
By _____
Date _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM ANNUAL CONTRIBUTIONS CONTRACT

PART I

Substantial Rehabilitation Project No. _____

Effective Date _____

[Date of execution by the Government of this ACC Part I]

ACC List Number and Date _____

1.1 *The Project.* The PHA proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to substantially rehabilitated dwelling units pursuant to an Agreement to Enter into Housing Assistance Payments Contract ("Agreement") executed prior to the commencement of rehabilitation. The numbers and sizes of units will be as follows:

Size of Unit Number of Units

The PH shall enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above. The PHA shall not enter into any Agreement or Contract or take any other action which will result in a claim for a total Annual Contributions in respect to the Project in excess of the maximum amounts stated in Section 1.4(a).

1.2 *Authorization of Actions by PHA.* In order to carry out the Project, the PHA is authorized to (a) enter into an Agreement, (b) enter into a Contract, (c) make housing assistance payments on behalf of Families, and (d) take all other necessary actions all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PHA nor the Government shall assume any obligation beyond that provided in the Government-approved Agreement and Contract.

1.3 *Term of ACC and Contract.* (a) This ACC shall remain in effect so long as the Contract is in effect but in no event shall the term of the ACC exceed _____ years from the beginning of the first fiscal year. [Insert number specified in the first sentence of paragraph (b) of this Section plus two years.]

(b) The total Contract term for any unit, including all renewals, shall not exceed _____ years. [Insert number as specifically authorized by the Government, but in no event more than 20 years, or 40 years in the case

of a project owned by, or financed by a loan, or loan guarantee from, a State or local agency]; *Provided, however,* That if the project is accepted in stages, the total Contract term for the units in all stages counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (b), plus 2 years.

1.4 *Annual Contributions.* (a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PHA, the Government shall not be obligated to make any Annual Contributions or any other payment in excess of:

(1) \$_____ for housing assistance payments under the Contract; or

(2) \$_____ for other Project Expenditures; or

(3) a total of \$_____ for all Project Expenditures in respect to the Project.

Provided, however, That these amounts shall be reduced commensurate with any reduction in the number of units under the Contract or pursuant to any other provision of this ACC.

(b) Subject to the maximum dollar limitations in paragraph (a) of this Section, the Government shall pay Annual Contributions to the PHA in respect to the Project in an amount equal to the sum of the following (subject to reduction by the amount of any Project Receipts other than Annual Contributions, which Receipts shall be available for Project Expenditures):

(1) The amount of housing assistance payments payable during the Fiscal Year (see Section 1.5) by the PHA pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(3) The allowance, in the amount approved by the Government, for the regular costs of administration.

(c) Subject to the maximum amount stated in paragraph (a) (3) of this Section, the Annual Contribution for any Fiscal Year may include such amount as the Government may determine to be necessary to assure that the lower-income character of the Project will be maintained, which amount shall be credited to an account maintained by the PHA or the Government as determined by the Government. To the extent funds are available in said account, the Annual Contribution for any Fiscal Year may exceed the maximum amounts stated in paragraph (a) of this Section by such amount, if any, as may be required for increases reflected in the estimates of required Annual Contributions applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11 below. Any amount remaining in said account after payment of the last Annual Contribution with respect to the Project shall be applied by the Government in accordance with law.

(d) The Government will make periodic payments on account of the Annual Contributions upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contract as such provisions apply respectively to (a) units under lease by Families and (b) units not under lease by Families; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year,

the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5 *Fiscal Year.* The Fiscal Year for the Project shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.4(a) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6 *Periodic Adjustment of Contract Rents.* (a) The Contract may provide for periodic adjustments in the Contract rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments up to the total annual housing assistance payments committed under Section 1.4(a) (1) of this ACC.

(b) The provisions of Section 1.4(c) of this ACC are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract rents or decreases in Family incomes. The Government shall take such additional steps authorized by Section 8(c) (6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

1.7 *Affirmative Fair Housing Marketing Regulation.* The PHA shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation (subject to any exceptions therein) including the submission for Government approval of an Affirmative Fair Housing Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to said Regulation.

1.8 *Expeditions Carrying Out of Project.* The PHA shall proceed expeditiously with the Project. If the PHA fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government by notice to the PHA, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the PHA or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.9 *Responsibility for Administration of Contract.* The PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following provisions shall be included in the Contract:

"(1) The Government shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract;

"(2) In the event the Government determines that the Owner is in default with respect to any or all of his obligations, the Government shall have the right to take direct action (as if the Government were the party to the Contract primarily responsible for its administration) to enforce any or all

available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the Contract, and termination of the Contract in whole or in part; and

(3) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA."

PHA _____
By _____
Date _____
THE GOVERNMENT
By _____
Date _____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM TERMS AND CONDITIONS CONSTITUTING PART II OF AN ANNUAL CONTRIBUTIONS CONTRACT BETWEEN PUBLIC HOUSING AGENCY AND THE UNITED STATES OF AMERICA

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2.1 Definitions. (a) "Families" means "Lower-Income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.

(b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age or are under a disability as defined in Section 223 of the Social Security Act or in Section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined under regulations of the Secretary to be a person essential to their care or well being.

(c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(d) "Lower-Income Families" means Families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(e) "Very Low-Income Families" means Families whose incomes do not exceed 50 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.

(g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.

(h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts, if any, accruing to the PHA from, out of, or in connection with such Project.

(j) "Project Expenditures" with respect to each Project means all costs allowable under

Section 1.4(b), Part I of this ACC with respect to such Project.

(k) "Substantial Default" means the occurrence of any of the events listed in Section 2.16.

2.2 Lower-Income Housing Use; Compliance with Act and Regulations. The PHA shall use the Annual Contributions solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3 Eligibility and Amount of Housing Assistance Payments. (a) The PHA shall comply with the income limits established by the Government and with the requirements of the Government pursuant to section 8(c) (7) of the Act concerning the leasing of at least 30 percent of assisted units to Very Low-Income Families.

(b) The PHA shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amounts of housing assistance payments made on behalf of Families.

(c) The PHA shall make or cause to be made periodic reexaminations of the income, composition, and extent of exceptional medical or other unusual expenses of Families for whom housing assistance payments are being made for the purpose of confirming or adjusting, in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.

(d) Prior to the approval of eligibility of a Family, and thereafter on the date established for each reexamination of the status of such Family, the PHA shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for a determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4 Inspections. (a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling units and related facilities in Decent, Safe, and Sanitary condition.

(b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families and shall make or cause to be made subsequent inspections at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that the agreed-to services are being furnished.

2.5 Nondiscrimination in Housing. (a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

"This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other]."

(b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations issued pursuant thereto.

(c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use of occupancy thereof, nor deny to any Family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

2.6 Equal Employment Opportunity. (a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) (1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY"

During the performance of this contract, the contractor agrees as follows:

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA setting forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race,

color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the contractor's non-compliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(G) The contractor will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (G) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(3) The PHA further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Govern-

ment or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.7. Training, Employment, and Contracting Opportunities for Businesses and Lower Income Persons.

(a) The project assisted under this ACC is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

(b) Notwithstanding any other provision of this ACC the PHA shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by Section 3; and incorporation of the "Section 8 clause" specified by Section 135.20(b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

(c) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR Section 135.135.

(d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.8. Cooperation in Equal Opportunity Compliance Reviews. The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.9. Clean Air Act and Federal Water Pollution Control Act. The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and Executive Order 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.10. Labor Standards. The PHA shall in-

corporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.11. Estimates of Required Annual Contributions. The PHA shall from time to time submit to the Government estimates of required annual contributions at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

2.12. Insurance and Fidelity Bond Coverage. For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project, the PHA shall carry adequate (1) comprehensive general liability insurance, (2) workmen's compensation coverage (statutory or voluntary), (3) automobile liability insurance against property damage and bodily injury (owned and non-owned), and (4) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

2.13. Books of Account and Records; Reports.

(a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.

(b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA, except as authorized or approved by the Government.

(c) The PHA shall furnish the Government such financial, operating, and statistical reports, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

REPORTS, ACCESS TO PREMISES AND RECORDS

(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.

(2) The Owner shall permit the PHA and the Government or any of their duly authorized representatives, to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests to the PHA for housing assistance payments.

(f) Audits required by the Government will be performed or paid for by the Government.

2.14. General Depositary Agreement and General Fund.

(a) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depositary Agreement," in form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depositary by the PHA. Immediately upon the execution of any General Depositary Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depositary Agreement shall be terminated except after 30 days notice to the Government.

(b) All monies received by or held for account of the PHA in connection with the Projects shall constitute the General Fund.

(c) The PHA shall, except as otherwise provided in this ACC, deposit promptly with such bank or banks, under the terms of the General Depositary Agreement, all monies constituting the General Fund.

(d) The PHA may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA stating in proper detail the purpose for which such withdrawal is made.

(e) If the PHA (1) in the determination of the Government is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to require any bank or other depositary which holds any monies of the General Fund to refuse to permit any withdrawals of such monies; Provided, however, that upon the curing of such Default the Government shall promptly rescind such requirement.

2.15. Pooling of Funds under Special Conditions and Revolving Fund.

(a) The PHA may deposit under the terms of the General Depositary Agreement monies received or held by the PHA in connection with any other housing project developed or operated by the PHA pursuant to the provisions of any contract for annual contributions, administration, or lease between the PHA and the Government.

(b) The PHA may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositaries of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the PHA operates other projects or enterprises in which the Government has no financial interest it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depositary Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositaries of the related

projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depositary Agreement.

(e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16. *Default.* (a) *Failure or Inability of PHA to Comply with Agreement.* In the event the Government determines that the PHA is in default as provided in the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceedings, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the Project. In such case, the Government will assume the PHA's rights and obligations under the Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

(b) *Failure or Inability of PHA to Comply with Contract.* In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder. In such case, the Government will assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

(c) *Other Defaults by the PHA.* If the PHA defaults in the observance or performance of the provisions of Section 2.4; fails to comply with its obligations under any duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.6, 2.7 or 2.8; defaults in the performance or observance of any term, covenant, or condition of this ACC other than the defaults enumerated in this paragraph, and if such defaults have not been remedied within a reasonable time, not to exceed 30 days, after the Government has notified the PHA thereof; or fails to comply with the applicable provisions of the Act and all regulations issued pursuant thereto; the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests in and to the project, or such part thereof as the Government may specify, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Pay-

ments Contracts in accordance with the terms of this ACC until reassigned to the PHA.

(d) *Return of Rights and Obligations to PHA.* All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16 will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(e) *Rights of Owner.* The provisions of this Section 2.16 are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the Owner and such assignees, as well as the PHA, shall have the right to proceed against the Government by suit at law or in equity.

2.17. *Remedies Not Exclusive and Non-Waivers of Remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, PHA and/or the Government from exercising any other remedy available under this ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to make any remedial action for the same or any subsequent default.

2.18. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.

(a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the PHA, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection; Provided, however, that any such present member, officer, or employee of the PHA shall not participate in any action by the PHA relating to such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the PHA, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter,

shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2. shall not be applicable to the General Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19. *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise therefrom.

APPENDIX IV

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT SUBSTANTIAL REHABILITATION

PRIVATE-OWNER/PHA PROJECT

PART I

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the ----- ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and ----- ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of the substantial rehabilitation of certain projects and land as described Final Proposal; and

Whereas, the Owner and the PHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible lower-income families ("Families") to occupy units in said project; and

Whereas, the PHA has entered into an Annual Contributions Contract dated -----, 19--, with the United States of America acting through the Department of Housing and Urban Development ("Government") with respect to Project No. ----- ("ACC"), under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments; and

Whereas, the Owner is also the rehabilitator, or, if the rehabilitator is other than the Owner, the rehabilitator's name is -----

Now therefore, the parties hereto agree as follows:

1.1 SIGNIFICANT DATES: CONTENTS OF AGREEMENT.

a. *Time for Completion of Project.* The time for completion of the project (see Section 1.2a) is ----- calendar days after the effective date of this Agreement.

b. *Date for Commencement of Work.* The date for commencement of work (see Section 1.2b) is -----, 19--.

c. *Contents of Agreement.* This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal including, among other things, evidence of management capability, and, if required, the architect's certification, the Affirmative Fair Housing Marketing Plan, and management program.

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The Annual Contributions Contract;

Exhibit D: The schedule of completion in stages, if applicable;

Exhibit E: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the

parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the PHA and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 Schedule of Completion.

a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit D which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the PHA reserves the right, subject to Government approval, to rescind this Agreement or take other appropriate action. The Owner shall report to the PHA the date work was commenced and shall thereafter furnish the PHA with periodic progress reports (quarterly unless more frequent reporting is required by the PHA).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the PHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increases in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 CONSTRUCTION PERIOD.

a. *Changes.* The Owner shall submit for PHA and Government approval any changes from Exhibit A which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. Approval of such changes may be conditioned on a reduction of Contract Rents. If such changes are made without prior approval by the PHA and the Government, the Owner may be required to reduce the Contract Rents or remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

b. *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 60 days prior to the estimated completion date. The Owner shall notify the PHA of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the PHA of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.7b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

c. *Management Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that there has been no change in the evidence of man-

agement capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the PHA and the Government in accordance with paragraph a of this Section.

d. *Labor Standards Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that he has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborer or mechanics in alleged violation of said provisions of the Agreement in the event there are any such pending claims to the knowledge of the Owner or the PHA or the Government, the Owner shall be required to place a sufficient amount in escrow as determined by the Government to assure payment thereof.

1.4 PROJECT COMPLETION.

a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government, with a copy to the PHA, when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidenced by furnishing the Government with all of the following:

(1) A certification by the Owner that:

(i) The property was treated and is in compliance with applicable HUD Lead Based Paint regulations 24 CFR 39,

(ii) If the property was constructed prior to 1950, the Family upon occupancy will receive the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained.

(2) A certificate of occupancy and/or other official approvals necessary for occupancy.

(3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) All work has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such expected items to be specified);

(iv) The project has been constructed in accordance with applicable zoning building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(4)² A certification by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working draw-

¹ Strike this paragraph if the project involves fewer than nine Contract units.

² Strike this subparagraph (4) if the work is to be done other than in accordance with working drawings and specifications prepared and certified to by a registered architect.

ings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. Inspection.

(1) Within ten working days of the receipt of the Owner's notification of project completion, the Government representative, accompanied by a PHA representative, shall inspect the project and review the evidence of completion listed in paragraph c of this Section. Such inspection shall be sufficient to enable the Government inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of such inspection, the project has been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certifications of the Owner or the design architect (if required) or the inspecting architect (if required). As promptly as possible, the Government shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes the Government's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

e. Acceptance of Project. If the Government determines that the project is not acceptable under paragraph d(1) of this Section, the following shall apply:

(1) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of the PHA and the Government, the PHA may, upon 30 days notice, as directed by the Government, terminate the Contract or exercise the PHA's other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but the Government determines that (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued, (ii) the project is in good and tenantable condition, and (iii) the project has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies or the project may be accepted subject to a specified reduction of the Contract Rents as determined by the Government.

(3) If the Government determines that the project is not acceptable under paragraphs e(1) or e(2) of this Section, the Government shall determine: (i) whether the defects or deficiencies can be corrected and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner shall be notified of the

Government's determinations under (i) and (ii) of this subparagraph, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted. Prior to authorizing execution of the Contract, the Government will verify that appropriate corrective action has been taken.

1. Completion in Stages. If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 EXECUTION OF HOUSING ASSISTANCE PAYMENTS CONTRACT.

a. Time of Execution. Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed by the Owner and the PHA and shall then be approved by the Government.

b. Completion in Stages. If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the PHA and approved by the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. Unleased Units at Time of Execution. At the time of execution of the Contract, the PHA shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The PHA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished to the Government.

d. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except that in no case may the initial Contract Rents for units in projects financed with mortgages insured under the National Housing Act exceed the rents approved by the Government in connection with the mortgage insurance for such projects.

e. No Changes in Contract. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with Section 1.3a and paragraph d of this Section.

1.6 GOVERNMENT ASSURANCE TO OWNER.

a. The approval of this Agreement by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its ob-

ligations under the Contract. The Government and the PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder for housing assistance payments except as authorized in the ACC and the Contract.

b. The ACC states that the ACC provisions quoted below in this paragraph are made for the benefit of the Owner, or his assignees who will have been specifically approved by the Government prior to such assignment, and that to enforce the performance of these provisions, the Owner and such assignees shall have the right to proceed against the Government by suit at law or in equity. Upon the determination by the Government that a default by the PHA has occurred, the following provisions of the ACC (which are hereby made a part of this Agreement), shall be applicable:

(a) Failure or Inability of PHA to Comply with Agreement. In the event the Government determines that the PHA is in default of its obligation under the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the project. In such case, the Government will assume the PHA's rights and obligations under the Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

(d) Return of Rights and Obligations to PHA. All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.17 will be returned as constituted at the time of such return (1) when the Government is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements or (2) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

1.7 Authority of the PHA. The PHA warrants that it is a "public housing agency" as defined in section 3(6) of the Act and that it is in fact and in law authorized to execute this Agreement.

Effective date. This Agreement shall be effective as of the date of execution by the Government.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts.

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Approved:	PHA
United States of	By
America Secretary of	(Official Title)
Housing and Urban	
Development	Date
	19--
By	OWNER
(Official Title)	By
	(Official Title)
Date	Date
19--	19--

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT—SUBSTANTIAL REHABILITATION—PRIVATE-OWNER/PHA PROJECT

PART II

2.1 *Training, Employment, and Contracting opportunities for businesses and lower-income persons.*^a a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

"A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-

income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

"E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 *Equal employment opportunity.*^a a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, re-

ligion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

^a Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$500,000 or less.

^a As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 *Cooperation in equal opportunity compliance reviews.* The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.*⁵ In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included

the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Prevailing wage rates.*⁶ a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of \$10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection.

⁵ Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$100,000 or less.

⁶ As used in Sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike Sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

tion upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR Section 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR Section 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 Submittal of payrolls and related reports. a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b) (2) (B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 Disputes Concerning Wage Rates and Classifications of Labor. a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 Wage claims and adjustments. In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 Contract Work Hours and Safety Standards Act—overtime compensation. a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 Termination; debarment; subcontracts. a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR Section 5.6.

b. The Owner shall insert in any subcontracts Section 2.6 (and with respect to Section 2.6g(2), copies of 29 CFR Sections 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these Sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 Disputes. a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with decisions rendered under paragraphs a and b of this Section; *Provided, however,* That nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 Interest of members, officers, or employees of PHA, members of local governing body, or other public officials. No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.14 Interest of member of or delegate to Congress. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.15 Nonassignability. a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; *Provided, however,* that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the PHA and the Government.

c. The Owner agrees that the approved developer has not made, and will not make, except with the prior consent of the PHA and the Government, any assignment or transfer in any form of the rehabilitator's

contract to construct the project, or of any part thereof, or any of the rehabilitator's interests therein.

d. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or rehabilitation in whole or in part, by a party holding rehabilitation ten percent or more of the stock of said Owner or developer, or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or rehabilitation of the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the project or the rehabilitation contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX V

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—SUBSTANTIAL REHABILITATION—PRIVATE-OWNER/PHA PROJECT

PART I

This Housing Assistance Payments Contract ("Contract") is entered into by and between the _____ ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and _____ ("Owner"), and approved by the United States of America acting through the Department of Housing and Urban Development ("Government"), pursuant to the Act and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq.

The parties hereto agree as follows:

1.1 *Significant dates and other items; contents of contract.* a. *Effective Date of Contract.* The effective date of this Contract is _____, 19____. [This date shall be no earlier than the date of approval by the Government.]

b. *Initial Term of Contract.* The initial term of this Contract (see Section 1.4a) shall be _____ years [not to exceed five years], beginning with the effective date of this Contract and ending _____, 19____.

c. *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see Section 1.4a) shall be _____ terms of _____ year each [not to exceed five years each].

d. *Maximum Total Term of Contract.* The maximum total term of this Contract, including renewals (see Section 1.4a) shall be _____ years. [Insert 20 years, or 40 years in the case of a project owned by or financed by a loan or loan guarantee from a State or local agency.]

e. *Fiscal Year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ [Insert March 31, June 30, September 30, or December 31, as determined by the Government].

f. *Annual Contributions Contract.* The Annual Contributions Contract applicable to this Contract ("ACC") (see Section 1.5a) is

the ACC dated _____ with respect to Project No. _____.

g. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.6a) is \$_____ per annum. [Enter amount specified in the ACC for housing assistance payments.]

h. *Contents of Contract.* This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B: The Project Description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's warranties.* a. *Legal Capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of Work.* The Owner warrants that the project as described in Exhibit B is in good and tenable condition and that all work has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of this Contract.

1.3 *Families to be housed; PHA assistance.*

a. *Families To Be Housed.* The Contract Units are to be leased by the Owner to eligible lower-income families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *PHA Assistance.* (1) The PHA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the PHA upon receipt of funds from the PHA for that purpose.

1.4 *Term of contract; fiscal year.* a. *Term of Contract.* The initial term of this Contract shall be stated in Section 1.1b. This Contract may be renewed, at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c, provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in Section 1.1d. Renewal shall be automatic unless the Owner notifies the PHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is accepted in stages, the dates for the Initial term and renewal terms shall be separately related to the units in each stage; Provided, however, that the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the

total Contract terms stated in Section 1.1d, plus two years.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1e; Provided, however that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.6a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Annual contributions contract.* a. *Identification of Annual Contributions Contract.* The PHA has entered into an Annual Contributions Contract with the Government as identified in Section 1.1f, under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act, for the purpose of making housing assistance payments. A copy of the ACC shall be provided upon request.

b. *PHA Pledge of Certain ACC Payments.* The PHA hereby pledges to the payment of housing assistance payments pursuant to this Contract the portion of annual contributions payable under the ACC for such housing assistance payments. The PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of such annual contributions, except as authorized in the ACC and this Contract.

c. *Government Approval of Housing Assistance Payments Contract.* The approval of this Contract by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract.

1.6 *Maximum housing assistance commitment; Project reserve.* a. *Maximum Housing Assistance Commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the PHA and the Owner, the PHA shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1g; Provided, however, that this amount shall be reduced commensurate with any reduction in the number of units under this Contract.

b. *Project Reserve.* As provided in the ACC, a project account shall be established and maintained, in an amount as determined by the Government consistent with its responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum annual ACC commitment exceeds amounts paid under the ACC for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family incomes (see Section 1.9). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.

1.7 *Housing assistance payments to owners.* a. *General.* (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with

the Contract. The housing assistance payment will pay the Owner the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The Owner shall be entitled to Contract Rents in accordance with the terms of this Contract. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income, Family composition, extent of exceptional medical or other unusual expenses, or by reason of adjustment by the Government of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with the Government-established schedules and criteria, and shall be effective as of the date stated in a notification of such change to the Family.

b. *Vacancies During Rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.3b of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to the PHA.

c. *Vacancies After Rent-up.* (1) If a Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.10b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner proposes to evict a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported by a certification that (i) he has given such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction is not in violation of the Lease or the Contract or any applicable law.

d. *Limitation on Payments for Vacant Units.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.10b of this Contract).

e. *PHA Not Obligated for Family Rent.* The PHA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction on any claim by the Owner against any Family other than in accordance with Section 1.10b of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of Families in accordance with this contract.

f. *Owner's Monthly Requests for Payments.* (1) The Owner shall submit monthly requests to the PHA or as directed by the PHA for housing assistance payments. Each such request set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit; and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling unit is in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed has been previously claimed or paid.

(3) If the Owner has received an excessive payment, the PHA or the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

1.8 *Maintenance, operation and inspection. a. Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the PHA determines that the Owner is not meeting any of these obligations, the PHA shall have the right, in

b. *Inspection.* (1) Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by the Government, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form.

(2) The PHA shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as the PHA may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections.

c. *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has

failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action with the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA does not have other Section 8 funds for such purposes, the PHA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The PHA shall promptly notify the Family of any such abatement.

e. *Overcrowded and Underoccupied Units.* If the PHA determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the PHA will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.7c(1).

1.9 *Rent adjustments. a. Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section up to the maximum total annual housing assistance payments committed under Section 1.6a of this Contract. The provisions of the ACC which are referred to in Section 1.6b of this Contract are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. The ACC further provides that the Government will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

b. *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted

by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special Additional Adjustments.* Special additional adjustments may be granted, when approved by the Government, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall Limitation.* Notwithstanding any other provisions of this Contract, adjustments as provided in this Section shall not result in material differences between the rents charged for assisted and comparable unassisted units as determined by the Government.

e. *Incorporation of Rent Adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit.

1.10 *Marketing and leasing of units.* a. *Compliance with Equal Opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. *Security and Utility Deposits.* (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner must comply with all State and local laws regarding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

c. *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. In the initial renting of

the Contract Units, the Owner shall lease at least 30 percent to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

(2) The lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. *Rent Redetermination after Adjustment in Allowance for Utilities and Other Services.* In the event that the Owner is notified of a Government determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. *Processing of Applications and Complaints.* The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Government requirements and shall maintain records and furnish such copies or other information as may be required by the Government.

f. *Review; Incorrect Payments.* In making housing assistance payments to Owners, the PHA or the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the PHA or the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.11 *Termination of tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in Section 1.7c.

1.12 *Reduction of number of contract units for failure to lease to eligible families.*

a. *Twelve Months after Effective Date of Contract.* If at any time, beginning six months after the effective date of this Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract Units leased or available for leasing by Families, the PHA, with Government approval, may on 30 days notice reduce the number of Contract Units to not less than the number of units under lease or available for leasing by Families, plus 10 percent of such number, if that number is 10 or more, rounded to the next highest number.

b. *At End of Initial and Each Renewal*

Term. At the end of the initial term of the Contract and of each renewal term, the PHA, with Government approval, may, by notice to the Owner, reduce the number of Contract Units to not less than (1) the number of units under lease or available for leasing by Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

(c) *Restoration of Units.* Any reduction pursuant to paragraphs a or b of this Section shall not preclude subsequent restoration of Contract units if contract authority is available and if the Government determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract.

1.13. *RESPONSIBILITY FOR ADMINISTRATION OF CONTRACT.* The PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following shall apply:

(a) The Government shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract.

(b) In the event the Government determines that the Owner is in default with respect to any or all of his obligations, the Government shall have the right to take direct action (as if the Government were the party to the Contract primarily responsible for its administration) to enforce any or all available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the Contract, and termination of the Contract in whole or in part.

(c) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA.

(c) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

APPROVED: OWNER _____
United States of By _____
America (Official Title)
Secretary of Housing Date _____, 19__
and Urban De- PHA _____
velopment
By _____ By _____
(Official Title) (Official Title)
Date _____, 19__ Date _____, 19__

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A-1. **EFFECTIVE DATE.** The effective date of this Contract with respect to the units described in Exhibit A-1 is _____, 19__.

[Insert date which shall be no earlier than the date of approval by the Government.]

APPROVED: OWNER -----
 United States By -----
 of America (Official Title)
 Secretary of Housing Date -----, 19--
 and Urban PHA -----
 Development By -----
 By ----- (Official Title)
 ----- Date -----, 19--
 (Official Title)
 Date -----, 19--

EXECUTION OF CONTRACT WITH RESPECT TO
 CONTRACT UNITS COMPLETED AND ACCEPTED
 IN STAGES

STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.
 Effective date. The effective date of this Contract with respect to the units described in Exhibit A-2 is -----, 19-- [Insert date which shall be no earlier than the date of approval by the Government.]

APPROVED: OWNER -----
 United States By -----
 of America Secretary (Official Title)
 of Housing and Date -----, 19--
 Urban Develop- PHA -----
 ment By -----
 By ----- (Official Title)
 ----- Date -----, 19--
 (Official Title)
 Date -----, 19--

EXECUTION OF CONTRACT WITH RESPECT TO
 CONTRACT UNITS COMPLETED AND ACCEPTED
 IN STAGES

STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.
 EFFECTIVE DATE. The effective date of this Contract with respect to the units described in Exhibit A-3 is -----, 19-- [Insert date which shall be no earlier than the date of approval by the Government.]

APPROVED: OWNER -----
 United States By -----
 of America Secretary (Official Title)
 of Housing and Date -----, 19--
 Urban Develop- PHA -----
 ment By -----
 By ----- (Official Title)
 ----- Date -----, 19--
 (Official Title)
 Date -----, 19--

SECTION 8 HOUSING ASSISTANCE PAYMENTS
 PROGRAM—HOUSING ASSISTANCE PAYMENTS
 CONTRACT—SUBSTANTIAL REHABILITATION—
 PRIVATE-OWNER/PHA PROJECT

PART II

2.1 Nondiscrimination in housing. a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.
 b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations;

and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government, of the said Department, and the PHA any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 Training, employment, and contracting opportunities for businesses and lower-income persons. a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of \$50,000 cost, the following clause:

1 Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are \$500,000 or less.

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS"

"A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

"E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.3 Cooperation in equal opportunity compliance reviews. The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.*² In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Reports and access to premises and records.* a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA or the Government.

b. The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests for housing assistance payments.

2.7 *Default by the owner.* a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

b. Upon a determination by the PHA that a default has occurred, the PHA, with approval of the Government, shall notify the Owner of the nature of the default, of the actions required to be taken on account of the default (including the curing of the default by the Owner, the abatement of housing assistance payments in whole or in part,

where appropriate, or any combination of actions), and of the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall take appropriate actions as directed or approved by the Government, to achieve compliance or to terminate the Contract in whole or in part.

2.8 *Default by the PHA.* The ACC states that the ACC provisions quoted in this Section are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment, and that to enforce the performance of these provisions, the Owner and such assignees shall have the right to proceed against the Government by suit at law or in equity. Upon the determination by the Government that a default by the PHA has occurred, the following provisions of the ACC (which is hereby made a part of this Contract), shall be applicable:

"(b) *Failure or inability of PHA to Comply with Contract.* In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder. In such case, the Government will assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

"(d) *Return of Rights and Obligations to PHA.* All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.17 will be returned as constituted at the time of such return (1) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements or (2) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner."

2.9 *Remedies not exclusive and non-waiver of remedies.* The availability of any remedy under this Contract shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.10 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Sec-

retary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with the decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.11 *Interest of members, officers, or employees of PHA, members of local governing body or other public officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.12 *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.13 *Nonassignability.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract on the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, rep-

²Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are \$100,000 or less.

resent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

DAVID M. DEWILDE,
Acting Assistant Secretary for
Housing Production and
Mortgage Credit—FHA Com-
missioner.

[FR Doc. 74-30358 Filed 12-27-74; 8:45 am]

[Docket No. R-74-304]

PART 1273—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

Notice was given on November 19, 1974 at 39 FR 40667 that the Department of Housing and Urban Development (HUD) was proposing to amend Title 24 of the Code of Federal Regulations by adding a new Part 1273 to Chapter VIII.

The purpose of Part 1273 is to set forth the essential elements of the Housing Assistance Payments Program—New Construction, including, among other things, the roles and responsibilities of HUD, public housing agencies (PHAs), developers, owners, and eligible lower- and very low-income families, the basis for determining the amount of housing assistance payments, and the prescribed forms of contracts.

HUD has received more than 115 responses to the November 19, 1974 publication. All of these comments were seriously considered and many changes have been incorporated in these regulations as a result. The principal changes are set forth below.

1. § 1273.101(b) has been modified so as to provide that housing already under construction may be eligible for participation under this Part if certain specified conditions are satisfied.
2. Provision is made for the PHA to make the determination with respect to Allowances for Utilities and Other Services, as set forth in §§ 1273.102(b) and 1273.218(i), respectively, in the case of a Private-Owner/PHA Project (as defined in § 1273.102(x)).
3. The definition of "Eligible Family" as set forth in § 1273.102(f), has been modified to clarify that disabled persons are included within this definition.
4. A definition of the term "HUD" has been added in a new § 1273.102(m) to include HUD's designee.
5. The procedures for inviting, ranking and selecting Preliminary Proposals (as defined in § 1273.102(w)) as set forth in §§ 1273.103(b), 1273.203, 1273.204(b) and 1273.208 have been clarified.
6. §§ 1273.103(e) (2) and 1273.103(e) (3) have been modified to increase the percent of Contract Rent payable in the event of vacancies from 70 to 80.
7. In § 1273.103(f) the provisions concerning approval of Contract Rights in excess of Fair Market Rents have been clarified.
8. § 1273.103(h) (3), the provision authorizing special additional adjustments under limited circumstances, has been clarified.

9. §§ 1273.103(q) (1), 1273.103(q) (2), 1273.204(c) (10), 1273.205(1) and 1273.209(a) (12), respectively, have been clarified with respect to situations where the Agreement or Contract is pledged as security for financing.

10. A new § 1273.103(q) (3) has been added to clarify the status of the Housing Assistance Payments Contract in the event of foreclosure, assignment or sale.

11. § 1273.103(r) has been modified to permit the owner to require each family to make a security deposit in the amount of one month's Gross Family Contribution.

12. §§ 1273.204(a) and 1273.204(b) (3), respectively, have been modified to permit special requirements and procedures with respect to proposals for mobile homes.

13. The provision precluding a PHA from being the Contract administrator where it is also the lender has been replaced by a provision permitting the PHA to administer the Contract in such cases subject to an express provision in the Contract giving HUD the right to take unilateral action in default situations. (see § 1273.103(v)).

14. § 1273.208(a) has been clarified to give the owner opportunity to supply omissions to the proposals.

15. § 1273.210(d) has been modified to provide for notification to the unit of general local government as to HUD's final action with respect to Final Proposals (as defined in § 1273.102(h)).

16. §§ 1273.211(b) (2) and 1273.216(b) (4) (iv), respecting the certifications of the design architect and the inspecting architect, have been clarified; and § 1273.216(c), regarding the scope and nature of the inspection and determination to be made by HUD upon completion of the project has been clarified.

17. § 1273.216(d), which sets forth the criteria for acceptance of a project, has been modified.

18. § 1273.218(l), which provides for the reduction of Contract units utilized by an owner over a substantial period of time for other than Eligible Families has been modified to provide for restoration of the withdrawn units under certain circumstances.

In view of the necessity to limit the comment period of fifteen days because of the statutory requirement that these regulations be made effective by January 1, 1975, comments will be received by HUD for a period of 30 days from the date of publication of these regulations, and HUD promptly at the end of the 30 day period, will make such modifications in these regulations as it deems appropriate.

In order to comply with the aforementioned statutory requirement, the Assistant Secretary for Housing Production and Mortgage Credit/FHA Commissioner has determined that these regulations be made effective January 1, 1975.

Effective date. These regulations shall become effective January 1, 1975.

Accordingly, Title 24 is amended as follows:

A new Part 1273, section 8 Housing Assistance Payments Program—New Construction, is added to Chapter VIII to read as set forth below.

Subpart A—Applicability, Scope and Basic Policies

- | | |
|----------|--------------------------|
| Sec. | |
| 1273.101 | Applicability and scope. |
| 1273.102 | Definitions. |
| 1273.103 | Basic policies. |

Subpart B—Project Development and Operation

- | | |
|----------|--|
| 1273.201 | Allocations of contract authority to field offices. |
| 1273.202 | Program mix (new construction, substantial rehabilitation, existing housing). |
| 1273.203 | Invitations for preliminary proposals. |
| 1273.204 | Contents of developers packet. |
| 1273.205 | Contents of preliminary proposal. |
| 1273.206 | Submission of preliminary proposals. |
| 1273.207 | Proposals involving HUD-FHA mortgage insurance. |
| 1273.208 | Screening and evaluation of preliminary proposals. |
| 1273.209 | Final proposals. |
| 1273.210 | Evaluation of final proposals. |
| 1273.211 | Owner's acceptance of notification and submission of architect's certification. |
| 1273.212 | Annual contributions contract and agreement (private-owner/PHA projects). |
| 1273.213 | Submission of estimates of required annual contributions (private-owner/PHA projects). |
| 1273.214 | Preparation and execution of agreement (private-owner and PHA-owner projects). |
| 1273.215 | Construction period. |
| 1273.216 | Project completion. |
| 1273.217 | Execution of housing assistance payments contract. |
| 1273.218 | Project operation. |
| 1273.219 | HUD review of contract compliance. |
| 1273.220 | PHA reporting requirements. [Reserved] |

APPENDICES

I. Agreement to enter into housing assistance payments contract—Private-owner or PHA-owner project.

II. Housing assistance payments contract—private-owner or PHA-owner project.

NOTE—Various prescribed forms which relate to internal HUD processing procedures are not included herein, but will appear in the HUD New Construction Handbook.

III. Annual contributions contract—private-owner/PHA project.

IV. Agreement to enter into housing assistance payments contract—private-owner/PHA project.

V. Housing assistance payments contract—private-owner/PHA project.

AUTHORITY: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); sec. 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Subpart A—Applicability, Scope and Basic Policies

§ 1273.101 Applicability and scope.

(a) The policies and procedures contained herein are applicable to the making of housing assistance payments on

behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of Section 8 of the U.S. Housing Act of 1937 ("Act").

(b) For the purpose of this Part, "new construction" shall mean newly constructed housing for which, prior to the start of construction, an Agreement to Enter into Housing Assistance Payments Contract is executed between the Owner and the Department of Housing and Urban Development ("HUD") or the Public Housing Agency. However, housing already under construction may be eligible for participation if all subsequent actions are in compliance with this Part and if the Owner certifies and demonstrates to the satisfaction of HUD that:

(1) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed; and

(2) At the date of application to HUD, the project cannot be completed without a commitment for assistance under this Part; and

(3) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this Part.

(c) Conversions of section 23 projects to the Section 8 program will be permitted where appropriate, provided that all parties (including HUD) agree to the terms and conditions.

§ 1273.102 Definitions.

(a) *Agreement to enter into housing assistance payments contract* ("Agreement"). (1) In the case of a Private-Owner Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the housing in accordance with the HUD-approved Final Proposal, HUD will enter into a Housing Assistance Payments Contract with the Owner. (See Appendix I of this part.)

(2) In the case of a Private-Owner/PHA Project, a written agreement between the private Owner and the PHA, approved by HUD, that, upon satisfactory completion of the housing in accordance with the HUD-approved Final Proposal, the PHA will enter into a Housing Assistance Payments Contract with the private Owner. (See Appendix IV of this part.)

(b) *Allowance for utilities and other services* ("Allowance"). An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family. In the case of a proposal under which the Families must pay directly for one or more utilities or services, the amount of the Allowance is deducted from the Gross Rent in determining the Contract Rent and is included in the Gross Family Contribution.

(c) *Annual contributions contract* ("ACC"). In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project. (See Appendix III of this part.)

(d) *Contract rent*. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

(e) *Decent, safe, and sanitary*. Housing is Decent, Safe, and Sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. (See § 1273.216.) Housing continues to be Decent, Safe, and Sanitary if it is being maintained in a condition substantially the same as that on acceptance, in all pertinent respects, including the following:

(1) Condition of the exterior (including the grounds) and the interior of the structure and of the housing unit;

(2) Operating condition of sanitary facilities and of solid and liquid waste disposal facilities;

(3) Operating condition of kitchen facilities, including range and refrigerator, sink, and space for storage of food and for storage of utensils and dishes;

(4) Operating condition of heating, lighting and ventilating equipment and/or other facilities; and

(5) Size, number of rooms, and furnishability in relation to the size and type of Family in occupancy in accordance with any applicable State or local codes.

(f) *Eligible family* ("Family"). A Family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this Part. The term Family includes an elderly, disabled, handicapped, or displaced person and the remaining member of a tenant family as defined in section 3(2) of the Act. A Family's housing assistance payment may continue until its Gross Family Contribution equals the Gross Rent for the dwelling unit it occupies, but the termination of housing assistance payments at such point shall not affect the family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or other relevant circumstances during the term of the Contract.

(g) *Fair market rent*. (1) The rent, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately developed and owned, newly constructed rental housing of modest (non-luxury) nature with suitable amenities and sound architectural design meeting the objectives of the HUD Minimum Property Standards.

(2) Separate Fair Market Rents will be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator, row, detached, mobile homes; housing designed for the elderly or handicapped shall be a separate type for this purpose).

(3) The Fair Market Rents will be published in the FEDERAL REGISTER, and,

in order to allow for the period of construction, computation of the published Fair Market Rents will include HUD's estimate of anticipated rent increases during an appropriate future period as stated in the publication. Accordingly, for any given project for which the scheduled construction time will be less than such future period, an appropriate reduction will be made in determining the approvable Contract Rent.

(4) The Fair Market Rent, minus the amount of any applicable Allowance for Utilities and Other Services payable directly by the Family, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be lower as stated in paragraph (g) (3) of this section and may be higher or lower as provided in § 1273.103(f).

(h) *Final proposal*. A proposal to provide newly constructed housing submitted in response to a HUD notification of selection of Preliminary Proposal. (See § 1273.204 and §§ 1273.208-1273.210.)

(i) *Gross family contribution*. The portion of the Gross Rent payable by an Eligible Family, i.e., the difference between the amount of the housing assistance payment payable on behalf of the Family and the Gross Rent.

(j) *Gross rent*. The Contract Rent plus any Allowance for Utilities and Other Services.

(k) *HCD act*. The Housing and Community Development Act of 1974.

(l) *Housing assistance payments contract* ("Contract").

(1) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix II of this part.)

(2) In the case of a Private-Owner/PHA Project, a written contract between the private Owner and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families. (See Appendix V of this part.)

(m) *Housing assistance payments on behalf of eligible family*. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD. (See § 1273.103(t).)

(n) *HUD*. The Department of Housing and Urban Development or its designee.

(o) *Income*. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

(p) *Invitation for preliminary proposals—new construction* ("invitation for preliminary proposals"). A notice published by HUD inviting the submission of Preliminary Proposals in accordance with this Part. (See § 1273.203.)

(q) *Lease*. A written agreement between an Owner and an Eligible Family for the leasing of a decent, safe, and sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this Part.

(r) *Local housing assistance plan.* A housing assistance plan submitted by a unit of general local government and approved by HUD under section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a housing plan which contains the elements set forth in section 104(a)(4) of the HCD Act and which is approved by the Secretary as meeting the requirements of section 213 of that Act.

(s) *Lower-income family.* A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

(t) *New communities.* New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

(u) *Owner.* Any private person or entity, including a cooperative, or a PHA, having the legal right to lease or sublease newly constructed dwelling units.

(v) *PHA-owner proposal and PHA-owner project.* A proposal for a project under this Part (and the resulting project) to be owned by a PHA throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the PHA and HUD.

(w) *Preliminary proposal.* A proposal to provide newly constructed housing submitted in response to a HUD Invitation for Preliminary Proposals. (See §§ 1273.203-1273.208.)

(x) *Private-owner/PHA proposal and private-owner/PHA project.* A proposal for a project under this Part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD.

(y) *Private-owner proposal and Private-owner project.* A proposal for a project under this Part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

(z) *Public housing agency ("PHA").* Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

(aa) *Secretary.* The Secretary of Housing and Urban Development.

(bb) *Very low-income family.* A family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 1273.103 Basic policies.

(a) *Limitation on use of newly constructed housing.* (1) No proposal for housing to be constructed may be approved by HUD unless HUD requirements implementing the provisions of sections 213(a), (b), and (c) of the HCD Act regarding review by the unit of general local government have been satisfied.

(2) New construction projects shall be permitted only where: (i) HUD determines that there is not and there is not likely soon to be an adequate supply of existing housing which, with the aid of housing assistance payments provided under the Section 8 Housing Assistance Payments Program—Existing Housing, can meet the needs of Eligible Families, or (ii) the proposed project is specifically approved by HUD in accordance with priorities established from time to time by the Secretary including priorities for New Communities.

(b) *Preference for certain types of projects.*—(1) *20 percent projects.* Assistance payments may be made with respect to up to 100 percent of the dwelling units in any structure or project. However, within the category of projects that are not designed for use primarily by the elderly and the handicapped and which involve the construction of more than 50 units, a preference will be provided for projects in which housing assistance will be limited to 20 percent or less of the units. (See § 1273.208(e)(1).)

(2) *Three or more bedroom projects.* Where the need for dwelling units of three or more bedroom size ("large dwelling units") is shown, each HUD field office shall be responsible, to the extent feasible, for inviting and selecting proposals which in the aggregate will achieve the goal of providing a number of large dwelling units equal to at least 20 percent of all the assisted units approved under the Section 8 Housing Assistance Payments Program, without undue concentration of such large dwelling units in any one location.

(c) *Maximum total annual housing assistance payments (private-owner or PHA-owner projects).* (1) The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.

(2) A project account will be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8 (c)(6) of the Act, out of amounts by which the maximum Contract commitment per year exceeds amounts paid under the Contract for any year. This account will be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

(i) Increases in housing assistance payments; and

(ii) Other costs specifically authorized or approved by the Secretary.

Any balance in this account after payment of the last housing assistance pay-

ment shall be applied by HUD in accordance with law.

(d) *Annual contributions (private-owner/PHA projects).*

(1) The maximum total annual contributions that may be contracted for in the ACC for a project shall be: (i) The total of the Gross Rents for all the Contract Units in the project plus (ii) a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(2) A project account will be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8 (c)(6) of the Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

(i) Increases in housing assistance payments;

(ii) Increases in the amount of the fee for regular PHA costs of administration; and

(iii) Other costs specifically authorized or approved by the Secretary.

Any balance in this account after payment of the last annual contribution for the project shall be applied by HUD in accordance with law.

(e) *Housing assistance payments to owners.*—(1) *General.* Housing assistance payments shall be paid to Owners for units under lease by Eligible Families, in accordance with the Contract and as provided in this paragraph (e). The housing assistance payment will pay the Owner the difference between the Contract Rent and the portion of said rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.

(2) *Vacancies during rent-up.* If a Contract unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (i) commenced marketing and otherwise complied with § 1273.215, (ii) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (iii) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(3) *Vacancies after rent-up.* (i) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance

payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 1273.103(r).) The Owner shall not be entitled to any payment under paragraph (e) (3) (i) of this section unless he: (A) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (B) has taken and continues to take the actions specified in paragraphs (e) (2) (ii) and (e) (2) (iii) of this section.

(ii) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (e) (3) (i) of this section unless the request for such payment is supported by a certification that (A) he gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (B) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(4) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this paragraph (e) to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 1273.103(r).)

(f) *Initial maximum rents to owners.*

(1) The sum of the initial Contract Rents and any Allowances for Utilities and Other Services shall not exceed the Fair Market Rents for newly constructed rental housing, except that such Fair Market Rents may be exceeded (i) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents and the higher rents meet the test of reasonableness in paragraph (f) (2) of this section, or (ii) by up to 20 percent, where the Assistant Secretary for Housing Production and Mortgage Credit determines that special circumstances warrant such higher rents or determines that such higher rents are necessary to the implementation of a Local Housing Assistance Plan, or that such higher rents meet the test of reasonableness in paragraph (f) (2) of this section.

(2) The Contract Rents as proposed must be determined by HUD to be reasonable in relation to the quality, location, amenities, methods and terms of financing, and management and maintenance services of the project, and proposed rents shall be subject to reduction if they are found to be higher than such reasonable rents.

(3) In addition, for projects financed with HUD-insured mortgages, initial Contract Rents for units assisted under this Contract shall not exceed the rents approved by HUD in connection with the mortgage insurance for such projects.

(g) *Term of housing assistance payments contract.* (1) A Contract may be for an initial term of not more than five years, with an option solely in the Owner to renew for additional terms of not more than five years each, provided that the total Contract term, including renewals, shall not exceed 20 years for any dwelling unit.

(2) In the case of a Contract under which housing assistance payments are made with respect to a project owned by, or financed by a loan or loan guarantee from, a State or local agency, the total Contract term may not exceed 40 years for any dwelling unit.

(3) In the case of mobile homes, the initial Contract term for any mobile home shall be for not more than five years, subject to renewal for additional terms of not more than five years each, as may be mutually agreed upon by the Owner and HUD or, in the case of a Private-Owner/PHA Project, by the Owner and the PHA with the approval of HUD; provided that the total Contract term for any mobile home shall not exceed 20 years. For purposes of paragraph (g) (3) of this section, the term "mobile home" means the original mobile home and any replacement(s), combined.

(4) In the case of any project under paragraph (g) (2) or (g) (3) of this section, notwithstanding the maximum total allowable term per unit stated therein, a shorter term shall be determined by HUD where appropriate, taking into account the amount of the capital expenditures reasonably required for the project, the reasonable period and rate of amortization for the financing, and the approved rents to the Owner.

(5) If the project is accepted in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage; provided, however, that the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.

(h) *Rent adjustments.*—(1) *Funding of adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum total annual housing assistance payments committed under the Contract. The provisions of the Contract or the ACC, as the case may be, are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. In addition, the Contract or the ACC, as the case may be, will provide that HUD will take such additional steps authorized by section 8(c) (6) of the Act as may be necessary to carry out this assurance, including as provided in that section) "the reservation of annual con-

tributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

(2) *Automatic annual adjustments.*

(i) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(ii) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(3) *Special additional adjustments.* Special additional adjustments may be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases in the Owner's operating costs are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(4) *Overall limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in paragraph (h) of this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

(i) *Types of housing and property standards.* (1) Newly constructed single-family houses, mobile homes or multi-family structures may be utilized in this program. Congregate housing may be developed for elderly or handicapped Families and individuals. Single room occupant housing planned specifically as a relocation resource for eligible single persons may also be developed. High-rise elevator projects for Families with children may not be utilized unless HUD determines there is no practical alternative. Generally, housing to be developed for use in this program should correspond to the predominant housing patterns of the locality in terms of structure type and density.

(2) No section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing for this purpose.

(3) Participation in this program requires compliance with (i) HUD Minimum Property Standards, (ii) in the case of mobile homes, the American National Standards Institute Standard No. A-119.1, as amended and adopted by HUD

under Title I of the National Housing Act, (iii) in the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards, (iv) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly or the handicapped, (v) HUD requirements pertaining to noise abatement and control, and (vi) applicable State and local laws, codes, ordinances, and regulations.

(j) *Site and neighborhood standards.* Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(1) The site shall be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and streets shall be available to service the site.

(2) The site and neighborhood shall be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(3) The site shall not be located in:

(i) An area of minority concentration unless (A) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (B) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable.)

(ii) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(4) The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower-income persons.

(5) The site shall be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The site shall comply with any applicable conditions in the Local Housing Assistance Plan, approved by HUD.

(7) The housing shall be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to

those typically found in neighborhoods consisting largely of unsubsidized, standard housing of similar market rents.

(8) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, shall not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(9) The project may not be built on a site which has occupants unless the relocation requirements referred to in § 1273.103(k) are met.

(10) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

(k) *Relocation.* (1) In the evaluation or selection of Preliminary Proposals, consideration shall be given to whether there are site occupants who would have to be displaced, whether there is a feasible plan for relocation of site occupants, the degree of hardship which displacement might cause, and the availability of funding for relocation payments. Greater weight shall be given to proposals which do not require displacement, or, where displacement is required, which will involve the least amount of hardship.

(2) In the case of a PHA-Owner Project, no Agreement shall be executed for housing which is to be constructed on a site which has occupants unless the Agreement provides (i) the PHA undertakes liability for and provides the funding of all relocation payments under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or (ii) other commitments, satisfactory to HUD, have been made for the funding of such payments. (In the case of a Private-Owner Project or a Private-Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

(l) *Equal opportunity requirements.* Participation in this program requires compliance with (1) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (2) all rules, regulations, and requirements issued pursuant thereto.

(m) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all rules, regulations, and requirements issued pursuant thereto.

(n) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water

Pollution Control Act and all rules, regulations, and requirements issued pursuant thereto.

(o) *Davis-Bacon Wage Rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any new construction project with nine or more assisted units.

(p) *Types of financing.* Any type of financing may be utilized, including, but not limited to, the types listed below.

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions.

(2) Mortgage insurance programs under the National Housing Act (see § 1273.207). (With respect to any obligation secured by a mortgage insured under section 221(d)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8, the interest paid on such obligation shall be included in gross income for purposes of Chapter I of the Internal Revenue Code of 1954.)

(3) Section 202 of the Housing Act of 1959.

(4) Title V of the Housing Act of 1949.

(5) Financing by tax-exempt bonds or other obligations. Where the financing is by a non-profit corporation which is an agency or instrumentality of a PHA, the project will be considered a PHA-Owner Project.

(q) *Use of contract as security for financing.* (1) An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Part; provided, however, that such security is in connection with a project constructed pursuant to this Part, and the terms of the financing or any refinancing have been approved by HUD. It is the Owner's responsibility to request such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment that HUD is requested to approve. Where the methods and terms of financing require, the Contract Rents may be reduced in accordance with §§ 1273.103 (f) (2).

(2) Any pledge of the Agreement, Contract, or ACC, or payments thereunder, shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.

(3) In the event of foreclosure, including foreclosure by HUD, and in the event of assignment or sale agreed to by HUD or made to HUD, housing assistance payments shall continue in accordance with the terms of the Contract.

(r) *Security and utility deposits.* (1) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused

by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner must comply with all State and local laws regarding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

(s) *Establishment of income limit schedules; 30 percent occupancy by very low-income families.* (1) HUD will establish schedules of income limits for defining Lower-Income Families and Very Low-Income Families.

(2) In the initial renting of Contract units, the Owner shall lease at least 30 percent to Very Low-Income Families and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families.

(t) *Establishment of amount of housing assistance payments.* The amount of housing assistance payment on behalf of an Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (1) not less than 15 percent nor more than 25 percent of the Family's gross income and (2) the Gross Rent, taking into consideration the income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family, except that, in the case of a large (6 or more minors) Very Low-Income Family or a very large (8 or more minors) Lower-Income Family or a Family with exceptional medical or other expenses, the amount of the housing assistance payment shall be the difference between 15 percent of the Family's gross income and the Gross Rent.

(u) *Responsibilities of the owner.* The Owner shall be responsible (subject to post-review or audit by HUD or the PHA, as the case may be) for management and maintenance of the project. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions including the taking of applications, selection of Families including verification of income and other pertinent requirements, and determination of eligibility and amount of Family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of Family rents;

(5) Termination of tenancies, including evictions;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexaminations of Family income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Family contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(8) Redeterminations of amounts of Family contribution and amount of housing assistance payment as a result of an adjustment by HUD of any applicable Allowance for Utilities and Other Services in accordance with HUD-established schedules and criteria; and

(9) Compliance with equal opportunity requirements.

Subject to HUD approval, any private Owner may contract with any private or public entity to perform such services for a prescribed fee, provided that such contract shall not shift any of the Owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (for example, a PHA in the case of a Private-Owner/PHA Project) may contract to perform management and maintenance of the project. (See, however, Sec. 1273.103(y) which permits conversion of a Private-Owner/PHA Project to a Private-Owner Project.)

(v) *Responsibility for administration of contract.* (1) In the case of a Private-Owner Project or a PHA-Owner Project, HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(2) In the case of a Private-Owner/PHA Project, the PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following shall apply:

(i) HUD shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract; and

(ii) In the event HUD determines that the Owner is in default with respect to any or all of his obligations, HUD shall have the right to take direct action (as if HUD were the party to the Contract primarily responsible for its administration) to enforce any or all available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the Contract, and termination of the Contract in whole or in part.

(w) *Separate project requirement.* (1) In the case of a Private-Owner Project or a PHA-Owner Project, each Agree-

ment and Contract shall constitute a separate project.

(2) In the case of a Private-Owner/PHA Project, such project may not include any other type of section 8 assistance, shall be processed with a separate ACC List and ACC Part I and shall be assigned a separate project number. All new construction units to be placed under a single Contract shall comprise a separate project. However, the field office director may designate as a single project the units to be covered by two or more such Contracts for new construction projects where:

(i) The units are placed under ACC on the same date; and

(ii) Such consolidation is necessary in the interest of administrative efficiency.

(x) *Conversion of private-owner project to private-owner/PHA project.* HUD may request the Owner of a Private-Owner Project and an appropriate PHA to agree, if they are willing, to a conversion of any such project to a Private-Owner/PHA Project if HUD determines that such conversion would promote efficient project administration.

(y) *Conversion of private-owner/PHA project to private-owner project.* The private Owner and the PHA, in the case of a Private-Owner/PHA Project, may request HUD to agree to a conversion of any such project to a Private-Owner Project. HUD shall agree to such conversion if it determines it to be in the best interest of the project.

Subpart B—Project Development and Operation

§ 1273.201 Allocations of contract authority to field offices.

HUD will allocate to field offices contract authority for the Section 8 Housing Assistance Payments Program for metropolitan areas and for nonmetropolitan areas in conformance with section 213 (d) of the HCD Act.

§ 1273.202 Program mix (new construction, substantial rehabilitation, existing housing).

Each field office shall, after considering the contents of any Local Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, determine the number and types of units to be advertised for new construction and for substantial rehabilitation, and to be made available for existing housing. The field office will also determine an appropriate schedule for advertising for Preliminary Proposals—New Construction.

§ 1273.203 Invitations for preliminary proposals.

(a) *Publication.* The HUD field office shall initiate implementation of its program with respect to new construction by publishing Invitations for Preliminary Proposals—New Construction in accordance with the schedule established by the field office. Such publications shall be at least once a week on the same day or days of each of two consecutive weeks in a newspaper(s) of general circulation serving the area(s) for which proposals

are desired. As promptly as possible, HUD will also notify minority media, business concerns included in HUD's registry of Section 3 businesses for the applicable political jurisdictions, minority organizations involved in housing and community development, and fair housing groups. In addition, to the extent feasible, HUD may notify appropriate PHAS, the chief executive officer of the appropriate unit(s) of general local government, trade journals, and other non-minority media. Copies of each Invitation shall be available in the HUD field office.

(b) *Contents of invitation.* The Invitation shall state the geographic area or areas in which the housing is to be constructed; the number of units in each area; the deadline for receipt of Preliminary Proposals by HUD; such other basic information as the field office may wish to specify; and the fact that detailed information, guidelines, standards and procedures are contained in a Developer's Packet which may be obtained by interested parties from the field office. The Invitation shall also state that Preliminary Proposals may be submitted by private Owners or PHA Owners for direct contracting with HUD, or by PHAS on behalf of private Owners with whom the PHA proposes to contract pursuant to an ACC with HUD.

(c) *Deadline for receipt of preliminary proposals.* The deadline (date and time) for receipt of Preliminary Proposals by HUD shall allow a reasonable time but, in any event, no less than 35 calendar days after the date of the first publication in a newspaper of general circulation.

§ 1273.204 Contents of developer's packet.

The Developer's Packet shall:

(a) Include a copy of the applicable regulations, required HUD forms, and HUD standards. Where the field office determines that mobile homes are appropriate or that there is an interest on the part of developers to utilize mobile homes, the Developer's Packet shall include the appropriate HUD standards and guidelines and shall indicate any modifications of the HUD requirements and procedures under this Part, including those relating to the site and site improvements, the type or types of units, and the special Fair Market Rents published for the area involved.

(b) Include the following information for each geographic area specified in the Invitation.

(1) The number of units for elderly and nonelderly occupancy and the number to be specially designed for elderly (including handicapped) occupancy.

(2) The number of units by unit size (bedrooms per unit) and the fact that a proposal may be for any number of units up to that amount.

(3) The type of housing, if any, which is unacceptable (e.g., high-rise elevator structures for Families with children, mobile homes where HUD has determined that such housing is inappropriate).

(4) Special requirements, if any, as to location, density, and site planning; in

the case of New Communities, identification of the proposed site, including location map, dimensions, unusual site features, if any, zoning, and the minimum price for the site.

(5) Any special requirements for housing for the elderly (including the handicapped) pursuant to section 209 of the HCD Act, and any special requirements for the handicapped pursuant to the standards established by HUD under Pub. L. 90-480.

(6) Any special requirements or restrictions that may be necessary for compliance with provisions of the Local Housing Assistance Plan, if any, and the name, address, and title of the official of the unit of general local government to whom inquiries may be made concerning such Plan.

(7) The specific type(s) of utility and method(s) of distribution (utility combination) required.

(8) The specific management and maintenance services required to be provided by the Owner. Such services shall include all services typically provided in the area for the type of housing contemplated.

(9) The Fair Market Rents for newly constructed rental housing applicable to the structure types and unit sizes requested.

(10) Initial term of the Contract, and number of renewal options, if any.

(c) Include statements as to:

(1) Equal opportunity requirements, which include the submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units); an assurance of compliance with Title VI of the Civil Rights Act of 1964; compliance with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, including regulations and guidelines pursuant thereto; and certifications required pursuant to Executive Order 11246.

(2) HUD regulations and other requirements implementing section 3 of the Housing and Urban Development Act of 1968, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(3) HUD relocation requirements.

(4) HUD requirements implementing the National Environmental Policy Act.

(5) Governmental requirements implementing the Clean Air Act and the Federal Water Pollution Control Act.

(6) HUD requirements implementing the Flood Disaster Protection Act of 1973.

(7) The requirement, if a project will contain nine or more Contract units, that all laborers and mechanics employed in the development of the project shall be paid not less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act.

(8) The prescribed HUD form showing the identity of the Owner, the developer, the builder, the architect, and the managing agent (if any); the qualifica-

tions and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest.

(9) The requirement that the Owner submit evidence of capability to provide the required management and maintenance services or, if the proposal is for 15 or more units, evidence of management capability and a proposed management plan and a certification by the Owner and the management agent, if any, in a format acceptable to HUD.

(10) The fact that if the Owner intends to pledge, or offer as security for any loan or obligation, an Agreement or Contract, he is responsible for submitting to HUD a request for such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment; and that if the request is made after approval of the Final Proposal, the Contract Rents may be reduced where the methods and terms of financing require. (See § 1273.103(q).)

(11) Other requirements which the HUD field office determines to be necessary.

(12) Where copies of HUD Minimum Property Standards and any other applicable standards, guidelines and criteria may be obtained.

(13) The number of copies of the Preliminary Proposal to be submitted to HUD.

(14) The fact that HUD may determine not to select or approve any or all Preliminary Proposals submitted.

§ 1273.205 Contents of preliminary proposal.

Each Preliminary Proposal shall include or indicate the following:

(a) Identification of the proposed site, including a map showing the location of the site and the racial composition of the neighborhood, sketch of site plan, dimensions, unusual site features, if any, and zoning (however, only a sketch of the site plan is required for a New Communities project).

(b) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the site(s) (however, only the proposed price is required for a New Communities project).

(c) A description of the proposed housing including number and type of structures, number of stories, structural system, exterior finish, heating-air conditioning system, number of units by size (number of bedrooms), living area and composition for each size of unit, and special amenities or features, if any; and sketches of the buildings and unit plans.

(d) The Contract Rent per unit, by size and structure type.

(e) The equipment to be included in the Contract Rent.

(f) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not included in the Contract Rent, an estimate of the average monthly cost (for the first

year of occupancy) to the occupants by unit size and structure type.

(g) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the provisions of the Local Housing Assistance Plan, if any.

(h) Whether the proposed project will displace site occupants. If so the proposal shall state the number of families, individuals, and business concerns to be displaced (identified by race or minority group status, and whether they are owners or renters), and shall show that there is a feasible plan for relocation and how necessary relocation payments, if any, will be funded.

(i) Equal Employment Opportunity Certification, using the prescribed form.

(j) The identity of the Owner, developer, builder (if known), and architect (if known); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(k) Whether the Owner intends to provide management services or to contract with a managing agent. In the latter case, provide the identity of the managing agent, if known, and the other information as specified in paragraph (j) of this section.

(l) The proposed method of financing and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 1273.103(q)). If the Owner proposes to utilize FHA mortgage insurance, the prescribed FHA form should be completed and submitted with the Preliminary Proposal.

(m) Whether the Owner proposes to limit the number of assisted units to 20 percent of the dwelling units in the project.

§ 1273.206 Submission of preliminary proposals.

(a) Preliminary Proposals shall be submitted to HUD on or before the published deadline date and time for opening, in the number of copies specified in the Developer's Packet. Proposal documents shall be sealed in an inner envelope marked "Sealed Proposal—Open on [date and time specified in the Invitation]." This sealed proposal shall be submitted in an outer envelope or package which shall show the name of the locality, be addressed to the HUD field office, and be clearly and distinctively marked "Section 8 Housing Assistance Payments Program—New Construction Preliminary Proposal."

(b) Submission of Preliminary Proposals shall be by hand delivery or certified mail. Any Preliminary Proposal received by HUD after the deadline date and time shall not be accepted but shall be returned unopened. No Preliminary Proposal shall be opened by HUD until the deadline.

§ 1273.207 Proposals involving HUD-FHA mortgage insurance.

(a) *Advance mortgage insurance processing.* This paragraph (a) applies to Owners who apply for HUD-FHA mortgage insurance prior to the submission of a Preliminary Proposal under this Part. Such an Owner may apply for a Site Appraisal and Market Analysis Letter (SAMA Letter), a Conditional Commitment, or a Firm Commitment for mortgage insurance by submitting an application on the prescribed form with supporting exhibits and the required fee. Such an application will have to meet the marketability test without reliance upon housing assistance payments under this Part, or, in the alternative, approval for mortgage insurance shall be conditioned upon subsequent approval of a section 8 proposal for the same project. If a SAMA Letter, Conditional Commitment, or Firm Commitment, whichever is applicable, is issued, and if prior to expiration thereof the Owner submits a Preliminary Proposal under this Part which is consistent with the proposal as approved for mortgage insurance, such proposal will nevertheless be subject to review and evaluation in accordance with the procedures under this Part; however, if the Preliminary Proposal is selected in accordance with the procedures under this Part, further processing will be coordinated in accordance with paragraph (b) of this section to the extent applicable, and the rents which were approved for mortgage insurance purposes will be accepted for purposes of such Preliminary Proposal provided that they are otherwise approvable in accordance with this Part.

(b) *Concurrent processing.* The provisions of this paragraph (b) apply where the Preliminary Proposal indicates an intention to finance a project with a HUD-FHA insured mortgage. Such a Preliminary Proposal will not be selected under this Part unless it meets the market and site acceptability criteria of the applicable mortgage insurance program except as modified by this paragraph. The processing of such a proposal for mortgage insurance will be integrated with the Section 8 review and evaluation process. Selection by HUD of such a Preliminary Proposal for preparation of a Final Proposal will be made only where HUD has also determined that the proposal will qualify for mortgage insurance subject to a satisfactory demonstration by the Owner of his capability to complete the project, and subject to subsequent determinations of site value, the loan amount and credit approval.

(1) A section 8/HUD-FHA mortgage insurance project will be required to meet the marketability test of the applicable mortgage insurance program; provided, however, that the number of units in the proposal for which housing assistance payments are to be made available will be considered as an addition to the effective demand for unassisted rental units. As in the case of any other market analysis for market rate unassisted mortgage

insurance programs, the supply of suitable vacant existing units, units under construction, and units in process must be subtracted from the estimate of total effective demand. Consequently, section 8/HUD-FHA insured units could be added to a market in which supply and demand are in equilibrium or in which there is an undersupply of rental units, but could not be added to a market in which there is an oversupply of rental units in the same competitive range of market rents as the proposed section 8/HUD-FHA insured project.

(2) After selection of a Preliminary Proposal which involves HUD-FHA mortgage insurance the Owner will be required to submit, with the Final Proposal, an application for HUD-FHA Conditional Commitment with fee (two dollars per thousand dollars of mortgage requested) under the applicable mortgage insurance program. Such Final Proposals will not be approved under Section 8 unless they also qualify for issuance of a HUD-FHA Conditional Commitment under the applicable mortgage insurance program. The HUD notification of approval of the Final Proposal will be accompanied by a HUD-FHA Conditional Commitment for HUD-FHA mortgage insurance. The Owner's acceptance of HUD's notification of approval of the Final Proposal will constitute concurrent acceptance of the conditions and terms of the HUD-FHA Conditional Commitment for mortgage insurance.

(3) The rents of those units scheduled for assisted occupancy, when projected for purpose of determining a mortgage limitation based on the debt service criterion, shall be the Contract Rents set forth in the approved Final Proposal.

(4) Prior to the execution of the Agreement, the Owner will be required to obtain a Firm Commitment for HUD-FHA mortgage insurance. This will require the submission of an application for a Firm Commitment, with an additional fee (one dollar per thousand dollars of the mortgage requested), upon submission of the architect's certificate accompanying the working drawings and specifications in accord with § 1273.211.

(c) *Delayed mortgage insurance processing.* Where an Owner does not indicate in his Preliminary Proposal that he intends to utilize HUD-FHA mortgage insurance and applies for HUD-FHA mortgage insurance after HUD approval of the Preliminary Proposal under this Part, he risks (1) having his approved proposal rejected for HUD-FHA mortgage insurance and (2) having lower rents approved under the mortgage insurance program than the rents set forth in the approved proposal under this Part.

§ 1273.208 Screening and evaluation of preliminary proposals

(a) *Initial screening.* Promptly after the deadline date for receipt of Preliminary Proposals, HUD will screen all

the proposals to determine which are complete and responsive and eligible for further processing. Where a proposal lacks one or more of the required element (see § 1273.205), or is clearly not responsive to the conditions of the Invitation and the Developers Packet, the HUD field office shall give the Owner the shortest reasonable time (generally not to exceed 10 days) to remedy the deficiency.

(b) *A-95 Clearance; notice to unit of general local government.* (1) Promptly after the deadline date for receipt of proposals (or after the appropriate later date for proposals completed pursuant to paragraph (a) of this section), the HUD field office will, for each complete and responsive Preliminary Proposal which is subject to A-95 clearance, send a copy of the proposal to the appropriate A-95 Clearinghouse for review, inviting a response within 34 days from the date of the letter of transmittal.

(2) Within 10 working days after the deadline date for receipt of proposals (or after the appropriate later date for proposals completed pursuant to paragraph (a) of this section), the HUD field office will forward, under cover of a letter in the appropriate prescribed form, a copy of each complete and responsive Preliminary Proposal to the chief executive officer (or such designee as such officer may designate in writing to the HUD field office) of the unit of general local government in which the proposed housing is to be located. The cover letter will invite a response within 30 days from the date the letter and copy of the proposal are received.

(c) *Evaluation of preliminary proposals by HUD.* HUD may begin its evaluation promptly after the deadline date, but no selection or ranking may be completed until the response periods referred to in paragraph (b) of this section have ended. Each Preliminary Proposal will be evaluated and ranked by HUD on the basis of all pertinent factors under this Part including the best combination of rent, site, design and previous experience of the proposed Owner and on the basis of comments, if any, received during the response periods from the appropriate A-95 Clearinghouse and the unit of general local government.

(d) *Selection where approvable proposals do not exceed number (by size) of units advertised.* For each geographic area HUD will determine which Preliminary Proposals, in its judgment, can be developed into Final Proposals meeting the requirements of the Developer's Packet. If the units covered by such Preliminary Proposals could all be accommodated in the number of units (by unit size) specified in the Invitation, HUD will request all Owners of acceptable Preliminary Proposals to prepare Final Proposals in accordance with § 1273.209.

(e) *Selection where approvable proposals exceed number (by size of units advertised).* If the units covered by acceptable Preliminary Proposals cannot all be accommodated by the number of units (by unit size) specified in the Invitation, HUD will proceed as follows:

(1) Proposals consisting of projects to be developed entirely or predominantly for the elderly shall be listed in rank order and a second rank listing shall be established for projects to be developed entirely or predominantly for family housing.

(2) With respect to the listing of proposals for elderly housing, the HUD field office will identify for selection the highest ranking proposals in descending order which will most nearly provide the number of units of elderly housing called for in the Invitation.

(3) With respect to the listing of proposals for family housing, the HUD field office will identify for selection the highest ranking proposals in descending order which collectively will most nearly provide the number and sizes of units of family housing called for in the Invitation; provided however that if there is a Preliminary Proposal for construction of more than 50 units of family housing which indicates that assistance will be limited to 20 percent or less of the units to be constructed, this proposal shall be given priority over the lowest ranking proposal(s) identified for selection which is for more than 50 units and which is for generally the same number and sizes of units.

(4) The field office shall determine whether the combined results of the tentative selections from both listings would exceed the number and sizes of units called for in the Invitation. If so, the field office shall make such revisions in the tentative selections as it may determine to be necessary.

(f) *Use of residual units.* For any residual number of units, HUD may publish another Invitation for Proposals, but this shall not delay the further processing of those Preliminary Proposals submitted in response to the prior Invitation that have been selected as a result of the prior Invitation.

(g) *Notification of selection.* (1) With respect to those Preliminary Proposals which have been selected in accordance with this section, HUD will notify the Owners, on a prescribed form, and request them to submit within a reasonable time (to be specified in the notification) a Final Proposal in accordance with the requirements of the provisions of § 1273.209. The notification shall specify:

(i) The Contract Rents that will be acceptable to HUD where these are lower than the Contract Rents proposed by the Owner, and the reason for the reduction;

(ii) The estimate of the amount of relocation payments, where applicable; and

(iii) Other special conditions or requirements, if any.

(2) The notification will request the Owner to return a copy of the notification with an indication of his acceptance thereof by a specified date. If the Owner does not accept the notification by the date specified, HUD may rescind the notification and select another approvable proposal.

(h) *Notification of nonselection.* Owners whose Preliminary Proposals were

not selected by HUD shall be sent a letter notifying them of such determination.

§1273.209 Final proposals.

(a) *Contents of final proposal.* Each Final Proposal shall indicate or include the following:

(1) A copy of the site option agreement(s), contract(s) of sale, or other document(s) which evidence(s) the proposer's effective control of the site(s) (however, only the proposed price is required for a New Communities project).

(2) A description of the proposed housing together with preliminary drawings and plans, and the outline specifications on the prescribed form. Preliminary drawings and plans shall include: site layout based on the topographical information available from existing records and the known subsurface soil conditions; landscape plans; general floor plans and unit plans, at the scale of 1/4 inch equals one foot; and elevation drawings for each typical building at the same scale.

(3) The Contract Rent per unit, by size and structure type.

(4) The equipment to be included in the Contract Rent.

(5) The utilities and services to be included in the Contract Rent and those utilities and services not so included. For each utility and service not so included, an estimate of the average monthly cost (for the first year of occupancy) to the occupants by unit size and structure type.

(6) In the case of a PHA-Owner Project, a statement that (i) the PHA will undertake liability for and provide the funding of all relocation payments under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, or (ii) other commitments, which the Owner believes to be satisfactory to HUD, have been made for the funding of such payments. In the latter case, the PHA shall specify such other commitments. (In the case of a Private-Owner Project or a Private-Owner/PHA Project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is inapplicable.)

(7) Submission of an Affirmative Fair Housing Marketing Plan (if the proposal is for five or more units), a signed assurance of compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and certifications required pursuant to Executive Order 11246.

(8) Submissions as required by HUD regulations and other requirements pursuant to section 3 of the Housing and Urban Development Act of 1968.

(9) The identity of the Owner, developer, builder, architect, and managing agent (if known); the qualifications and experience of each; and the names of officials and principal members, shareholders and investors, and other parties having substantial interest, and the prior participation of each in HUD programs, using the prescribed form.

(10) Submission of evidence of management capability and a proposed manner intends to utilize FHA mortgage in-

agement plan and a certification by the Owner and the management agent, if any, in a format acceptable to HUD; or, if the proposal is for less than 15 units, evidence of capability of providing the required management and maintenance services. If the Owner proposes to contract with another entity, including a PHA for management and/or maintenance services for the project, he shall include a copy of the proposed contract(s).

(11) Submission of the form of Lease the Owner proposes to use, which shall be in accordance with § 1273.218(c).

(12) The proposed method of financing and whether the Owner intends to pledge or offer the Agreement and/or Contract as security for any loan or obligation (see § 1273.103(q)). If the Owner intends to utilize FHA mortgage insurance, an application for a Conditional Commitment on the prescribed form shall be completed and submitted with the prescribed fee with the Final Proposal.

(13) Evidence that the proposed construction is permissible under the applicable zoning, building, housing and other codes, ordinances or regulations; or a statement of the proposed action to make the construction permissible and that such action will be successfully completed prior to the architect's certification pursuant to § 1273.211(b).

(14) The anticipated time required for completion of the project after the Agreement is signed (if the project is to be completed in stages, identification of the units comprising each stage and the estimated dates for commencement and completion of each stage).

(b) *Consistency with preliminary proposal.* The Final Proposal shall be consistent with the Preliminary Proposal. Any material deviations from the Preliminary Proposal in the Final Proposal will cause reconsideration by HUD of such Final Proposal and may result in its rejection.

§ 1273.210 Evaluation of final proposals.

(a) *Evaluation of final proposals by HUD.* Each Final Proposal will be evaluated by HUD to determine that the provisions of this Part have been complied with and that such Final Proposal is consistent with the Preliminary Proposal.

(b) *Clarifications or modifications.* HUD may request clarification of individual items, additional information, or modifications of the Final Proposal.

(c) *HUD determination.* HUD shall notify the Owner (and the PHA, if applicable) as to whether the Final Proposal is:

(1) Approved.

(2) Approvable only if specified deficiencies are corrected and that HUD will approve the Final Proposal if it receives within a specified time evidence of such necessary corrections.

(3) Not approved. If a Final Proposal is not approved or if the conditions for approval under paragraph (c) (2) of this section are not met, HUD shall so advise the Owner and may request the preparation of a Final Proposal(s) with respect to the highest ranking Preliminary Proposal(s) not previously selected, or may issue another Invitation for Preliminary Proposals.

(d) *Notification.* The appropriate A-95 Clearinghouses and the unit of general local government shall be notified by HUD of its final action.

§ 1273.211 Owner's acceptance of notification and submission of architect's certification.

(a) *Owner's Acceptance.* Upon receipt by the Owner of the notification of approval of the Final Proposal, the Owner shall return to HUD a copy indicating his acceptance within the time prescribed in such notification (copy to the PHA, if applicable). If the Owner does not accept the notification by the date specified, HUD may rescind the notification and proceed in accordance with § 1273.210(c) (3).

(b) *Architect's certification.* (1) Before HUD may enter into an Agreement (or, where applicable, an ACC and an Agreement) the Owner shall submit to HUD the architect's certification on the prescribed form. Such certification shall be made by the architect responsible for the preparation of the working drawings and specifications.

(2) The architect's certification shall state that, to the best of the architect's knowledge, belief, and professional judgment, (i) the working drawings and specifications are consistent with the approved Final Proposal (including any modifications required by HUD in its review of the Final Proposal), and (ii) the proposed construction in accordance with these plans and specifications is permissible under the applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials. This certification shall also cover compliance with the appropriate HUD Minimum Property Standards and other standards, guidelines and criteria applicable under this Part, except that in the case of mobile homes the manufacturer shall certify that the mobile homes will comply with the American National Standards Institute Standard No. A-119.1, as amended and adopted by HUD under Title I of the National Housing Act.

(3) One copy of the certified working drawings and specifications shall be submitted with the architect's certification to HUD, which shall retain it and any changes approved by HUD for at least three years from the date of acceptance of the project; provided, however, that receipt and retention by HUD of these working drawings and specifications shall not denote or constitute HUD review or approval of such drawings or specifications.

(4) If the Owner fails to submit the certification by the date specified in the notification, HUD shall rescind the notification (and may proceed in accordance with § 1273.210(c) (3)) unless it determines that a reasonable extension of time should be granted.

§ 1273.212 Annual contributions contract and agreement (private-owner/PHA projects).

(a) *Preparation of ACC.* After receipt of the architect's certification with the working drawings and specifications, the HUD field office shall prepare the ACC, shown as Appendix III. The ACC shall be transmitted to the PHA for execution and returned to HUD. This transmittal shall advise the PHA that it must simultaneously submit for HUD approval its Initial Estimate of Required Annual Contributions (Preliminary Costs) and an Estimate of Total Required Annual Contributions (see § 1273.213).

(b) *Preparation of agreement.* The Agreement shall be prepared by the HUD field office at the time the ACC is prepared (see § 1273.214), and shall conform to the prescribed shall include all required information and required attachments.

(c) *Execution of ACC and agreement.* After receipt of the PHA-executed ACC, accompanied by the Estimates of Required Annual Contributions, HUD shall review the Estimates and, if approved, execute the ACC. HUD shall then transmit a fully executed copy of the ACC to the PHA, together with four copies of the unexecuted Agreement. After execution of the Agreement by the PHA and the Owner, all copies shall be returned by the PHA to HUD for approval. HUD shall return three copies to the PHA, retaining one for its records.

§ 1273.213 Submission of estimates of required annual contributions (private-owner/PHA projects).

(a) *Initial submission.* An allowance may be provided for preliminary costs incurred by the PHA prior to the beginning of the first fiscal year. When the ACC is executed by the PHA, it shall submit an Initial Estimate of Required Annual Contributions (Preliminary Costs) together with an Estimate of Total Required Annual Contributions on the prescribed forms. This submission includes estimates of costs of administration and non-expendable equipment up to the beginning of the first fiscal year.

(b) *First fiscal year submission.* Not earlier than 150 and not later than 90 days prior to the estimated date of the beginning of the first fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) covering the estimated amount required for the first fiscal year for housing assistance payments and for the fee for administration together with an Estimate of Total Required Annual Contributions.

(c) *Subsequent fiscal year submissions.* Not earlier than 150 and not later than 90 days prior to the beginning of each subsequent fiscal year, the PHA shall submit an Estimate of Required Annual Contributions (Housing Assistance and Administration) and an Estimate of Total Required Annual Contributions, with supporting documentation, for any requested changes in the amount of housing assistance payments and the fee for administration.

(d) *Revisions of Estimates.* Any of the above Estimates may be revised to reflect

changes in circumstances and available data.

(e) *HUD Approval.* All Estimates of Required Annual Contributions and any revisions thereto submitted by the PHA shall be subject to HUD approval.

§ 1273.214 Preparation and execution of agreement (private-owner and PHA-owner projects).

After receipt of a copy of the accepted notification, the architect's certification and the working drawings and specifications, the HUD field office shall prepare the Agreement in the prescribed form shown as Appendix I. The Agreement shall include all required information and required attachments. HUD shall transmit to the Owner three copies of the unexecuted Agreement. After the Owner executes all copies of the Agreement, he shall return them to HUD. HUD shall execute the Agreement, returning one copy to the Owner and retaining two for its records.

§ 1273.215 Construction period.

(a) *Timely performance of work.* After execution of the Agreement, the Owner shall promptly proceed with construction as provided in the Agreement. In the event the work is not so commenced, diligently continued, and/or completed, HUD (or the PHA with HUD approval, as appropriate) reserves the right to rescind the Agreement, or take other appropriate action.

(b) *Delays.* Although extensions of time may be granted for the reasons specified in the Agreement, no increases in Contract Rents may be granted on that account.

(c) *Changes.* The Owner shall submit for HUD approval any changes from the approved Final Proposal which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior HUD approval, HUD may determine that Contract Rents shall be reduced or that the Owner shall remedy the deficiency as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

(d) *Inspection of HUD-FHA insured projects.* For projects financed with HUD-FHA insured mortgages, required HUD inspection procedures shall be followed including compliance with equal opportunity requirements.

(e) *Equal opportunity review.* Equal opportunity review may be conducted with any scheduled HUD inspection or at any other time deemed advisable by HUD.

(f) *Commencement of marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the estimated completion date. The Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion

date and periodically thereafter, the Owner shall notify HUD (or the PHA in the case of a Private-Owner/PHA Project) of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed (see § 1273.217), the Owner will be required to submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units, pursuant to § 1273.103(e)(2), only if he has fully complied with the requirements of that section and of this paragraph.

(g) *Management certification.* Prior to acceptance of the project by HUD, the Owner must certify in writing that there has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by HUD in accordance with the Agreement.

(h) *Labor standards certification.* Prior to acceptance by HUD of any project consisting of nine or more Contract units, the Owner must certify in writing that he has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of his knowledge and belief there are no claims of underpayment in the alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, HUD, or the PHA (if applicable), the Owner shall be required to place a sufficient amount in escrow, as determined by HUD, to assure such payments.

§ 1273.216 Project completion.

(a) *Notification of completion.* The Owner shall notify HUD (with a copy to the PHA in the case of a Private-Owner/PHA Project) when the work is completed and shall submit to HUD the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* Completion of the project shall be evidenced by furnishing HUD with all of the following:

- (1) A set of as-built drawings.
- (2) A certificate of occupancy and/or other official approvals necessary for occupancy.
- (3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) All work has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(4) A certification by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment,

and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified by the architect).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(c) *Inspection.* (1) Within ten working days of the receipt of the Owner's notification of project completion, a HUD representative (accompanied by a PHA representative, if applicable) shall inspect the project and review the evidence of completion listed in paragraph (b) of this section. Such inspection shall be sufficient to enable the HUD inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of such inspection, the project has been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certifications of the Owner or the design architect or the inspecting architect. As promptly as possible, HUD shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes HUD's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

(d) *Acceptance of project.* If HUD determines that the project is not acceptable under paragraph (c)(1) of this section, the following shall apply:

(i) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of HUD, HUD may, upon 30 days notice, terminate or require termination of the Contract or exercise its other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but HUD determines that: (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued, (ii) the project is in good and tenantable condition, and (iii) the project has been constructed in accordance with the applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies

or the project may be accepted subject to a specified reduction of the Contract Rents as determined by HUD.

(3) If HUD determines that the project is not acceptable under paragraphs (d) (1) or (d) (2) of this section, HUD shall determine: (i) whether the defects or deficiencies can be corrected, and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner thereupon shall be notified of HUD's determinations under paragraph (d) (3) (i) and (d) (3) (ii) of this section, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

(e) *Completion in stages.* If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§ 1273.217 Execution of housing assistance payments contract.

(a) Upon acceptance of the project by the Government pursuant to §§ 1273.215 and 1273.216, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in § 1273.215(f), and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished HUD in the case of a Private-Owner/PHA Project.

§ 1273.218 Project operation.

(a) *Compliance with equal opportunity requirements.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) *Eligibility, selection and admission of families.* (1) The Owner shall be responsible for determination of eligibility

of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family, in accordance with schedules and criteria established by HUD.

(2) For every family that wishes to apply for admission, the Owner and the applicant shall complete and sign the form of application prescribed by HUD, except that if there are no vacant units and the Owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the Owner may advise the applicant that the Owner is not accepting applications for that reason. The Owner shall retain copies of all completed applications together with any related correspondence for three years. For each Family selected for admission, the Owner shall submit one copy of the completed and signed application to the HUD field office (in the case of Private-Owner/PHA Projects, the Owner simultaneously shall send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted Family until after this copy has been received by the HUD field office.

(3) If the Owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.

(4) If the Owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in conformity with the provisions of this Part.

(5) Records on application families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.

(6) In the case of a PHA-Owner project. (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall send the applicant a letter notifying him of the determination and the reasons and that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he be-

lieves he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the letter, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

(c) *Lease requirements.* The Lease shall contain all required provisions specified in paragraph (c) (2) of this section and none of the prohibited provisions listed in paragraph (c) (3) of this section and shall otherwise conform to the form of Lease included with the Owner's approved Final Proposal.

(1) *Term of lease.* The term of the Lease shall be generally for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(2) *Required provisions.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____ In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be \$_____ per month.

b. Of the total rent, \$_____ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and \$_____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, or by reason of adjustment by HUD of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with HUD-established schedules and criteria and shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Lessor shall provide the following services and maintenance: [Here insert the complete list as contained in the approved Final Proposal.]

Lessor _____
By _____
Date _____
Lessee _____
Date _____

(3) *Prohibited provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(i) *Confession of judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(ii) *Distrain for rent or other charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(iii) *Exculpatory clause.* Agreement by tenant not to hold the landlord or land-

lord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(iv) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(v) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(vi) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's rights to a trial by jury.

(vii) *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(viii) *Tenant chargeable with costs of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

(d) *Termination of tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in § 1273.103 (e) (3) (ii).

(e) *Maintenance, operation and inspections.* (1) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(2) *Inspection.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by HUD, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form. HUD (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. HUD (or the PHA) will take in-

to account complaints by occupants and any other information coming to its attention in scheduling inspections.

(f) *Units not decent, safe, and sanitary.* If HUD (or the PHA, as appropriate) notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD (or the PHA) may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and HUD (or the PHA) does not have other section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if:

(1) The unit is restored to Decent, Safe, and Sanitary condition;

(2) The Family is willing to and does move back to the restored dwelling unit; and

(3) A deduction is made for the expenses incurred by the Family for both moves.

(g) *Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.* Reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the Owner at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of the Family contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD.

(h) *Overcrowded and underoccupied units.* If HUD or the PHA, as the case may be, determines that a Contract unit assisted under this Part is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 1273.103 (e) (3) (i).

(i) *Adjustment of allowance for utilities and other services.* HUD or the PHA, as the case may be, shall determine, as

part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the Owner to make promptly a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payment.

(j) *Continued family participation.* A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (1) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (2) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit, the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

(k) *Inapplicability of low-rent public housing model lease and grievance procedures.* Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are applicable only to PHA-Owner Projects under the section 8 Housing Assistance Payments Program.

(l) *Reduction of number of contract units for failure to lease to eligible families.* (1) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract units leased or available for leasing by Eligible Families, HUD (or the PHA at the direction of HUD, as appropriate) may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Eligible Families, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

(2) At the end of the initial term of the Contract and of each renewal term, HUD (or the PHA at the direction of HUD, as appropriate) may, by notice to the Owner, reduce the number of Contract units to not less than (i) the number of units under lease or available for leasing by Eligible Families at that time or (ii) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

(3) Any reduction pursuant to paragraphs (1) (1) or (1) (2) of this section shall not preclude subsequent restoration of Contract units if contract author-

ity is available and if HUD determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract.

§1273.219 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 1273.220 PHA reporting requirements. [Reserved]

APPENDIX I—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER OR PHA-OWNER PROJECT

PART I

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government") and _____ ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of improvements and land as described in the approved Final Proposal; and

Whereas, the Owner and the Government propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible lower-income families ("Families") to occupy units in said project; and

Whereas, the Owner is also the developer, or, if the developer is other than the Owner, the developer's name is _____;

Now therefore, the parties hereto agree as follows:

1.1 Significant dates: Contents of agreement.

a. *Time for completion of project.* The time for completion of the project (see Section 1.2a) is _____ calendar days after the effective date of this Agreement.

b. *Date for commencement of work.* The date for commencement of work (see Section 1.2b) is _____, 19____.

c. *Contents of agreement.* This agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal including, among other things, the architect's certification, the Affirmative Fair Housing Marketing Plan (if required), evidence of management capability, and management program (if required);

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The schedule of completion in stages, if applicable;

Exhibit D: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the Government and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 Schedule of completion.

a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit C which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the Government reserves the right to rescind this Agreement or take other appropriate action. The Owner shall report to the Government the date work was commenced and shall thereafter furnish the Government with periodic progress reports (quarterly unless more frequent reporting is required by the Government).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the Government, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increase in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 Construction period.

a. *Changes.* The Owner shall submit for Government approval any changes from Exhibit A which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. The Government may condition its approval of such changes on a reduction of Contract Rents. If such changes are made without prior Government approval, the Government may determine that Contract Rents shall be reduced or that the Owner shall remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

b. *Commencement of Marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the estimated completion date. The Owner shall notify the Government of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the Government of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.6b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

c. *Management Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that there has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the Government in

accordance with paragraph a of this Section.

d. *Labor Standards Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that he has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or the Government, the Owner shall be required to place a sufficient amount in escrow as determined by the Government to assure payment thereof.

1.4 Project completion.

a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidenced by furnishing the Government with all of the following:

(1) A set of as-built drawings.
(2) A certificate for occupancy and/or other official approvals necessary for occupancy.

(3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) All work has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(4) A certification by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. Inspection.

(1) Within ten working days of the receipt of the Owner's notification of project completion, the Government representative shall inspect the project and review the evidence of completion listed in paragraph c of this Section. Such inspection shall be sufficient to enable the Government inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of such inspection, the project has

¹ Strike this paragraph if the project involves fewer than nine Contract units.

been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certifications of the Owner or the design architect or the inspecting architect. As promptly as possible, the Government shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes the Government's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

e. *Acceptance of project.* If the Government determines that the project is not acceptable under paragraph d(1) of this Section, the following shall apply:

(1) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of the Government, the Government may, upon 30 days notice, terminate the Contract or exercise its other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but the Government determines that (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued (ii) the project is in good and tenantable condition, and (iii) the project has been constructed in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies or the project may be accepted subject to a specified reduction of the Contract Rents as determined by the Government.

(3) If the Government determines that the project is not acceptable under paragraphs e(1) or e(2) of this Section, the Government shall determine: (i) whether the defects or deficiencies can be corrected and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner shall be notified of the Government's determination under (i) and (ii) of this subparagraph and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted. Prior to execution of the Contract, the Government will verify that appropriate corrective action has been taken.

f. *Completion in Stages.* If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 *Execution of housing assistance payments contract.*

a. *Time of Execution.* Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed first by the Owner and then by the Government.

b. *Completion in Stages.* If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. *Unleased Units at Time of Execution.* At the time of execution of the Contract, the Government shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The Government shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract.

d. *Contract Rents.* The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except that in no case may the initial Contract Rents for units in projects financed with mortgages insured under the National Housing Act exceed the rents approved by the Government in connection with the mortgage insurance for such projects.

e. *No Changes in Contract.* Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than in accordance with Section 1.3a and paragraph d of this Section.

1.6. *Government assurance to owner.* The execution of this Agreement by the Government signifies that the faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract and that funds have been obligated by the Government for such payments.

1.7 *Relocation requirements.*²
[Alternative provisions—incorporate alternative 1 or 2, as applicable.]

Alternative 1—For projects which were without site occupants as of the date indicated in this alternative.

The Owner hereby certifies that the site of the project was without occupants as of the date of the Government notification to the Owner requesting the Owner to submit a Final Proposal.

Alternative 2—For projects which do not qualify for alternative 1.

a. *Owner Compliance with Relocation Act.* The Owner agrees to comply with the provisions of sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable Government regulations and requirements issued pursuant thereto.

b. *Relocation Payments Other than by Owner.* The Government has determined that satisfactory commitments have been made for the funding of relocation payments required by sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as follows:

c. *Relocation Payments by Owner.* If paragraph b is inapplicable, the following shall apply:

(1) The maximum potential amount of all relocation payments as estimated by the Government is \$-----.

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the

² Strike this Section in the case of a Private-Owner Project.

Government for the purpose of meeting relocation payments.

(3) The Owner hereby voluntarily undertakes liability for all relocation payments and agrees that if the funds in the escrow account shall prove to be insufficient to meet all such relocation payments he will deposit such additional amounts as the Government determines to be necessary for such purpose.

(4) When the Government determines that there is no longer any potential liability for relocation payments, any balance in the escrow account shall be paid to the Owner.

(5) The Owner agrees to hold harmless and to indemnify the Government for any costs incurred under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in connection with the relocation of site occupants, and the Owner further agrees that the Government shall have the right to be reimbursed for any such costs by withholding from housing assistance payments payable to the Owner.

Effective date. This Agreement shall be effective as of the date of execution by the Government.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts.

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

United States of America
Secretary of Housing and
Urban Development

By -----

(Official title)

Date -----, 19--

Owner -----

By -----

(Official title)

Date -----, 19--

SECTION 8 HOUSING ASSISTANCE PAYMENTS
PROGRAM—AGREEMENT TO ENTER INTO
HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER OR PHA-OWNER PROJECT

PART II

2.1 *Training, employment, and contracting opportunities for businesses and lower-income persons.*³

a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to,

³ Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$500,000 or less.

development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the

latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 Equal employment opportunity.⁴

a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regula-

⁴ As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

tions, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 Cooperation in equal opportunity compliance reviews. The Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean air act and federal water pollution control act.* In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Prevailing wage rates.*^a

a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the

workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. And employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of \$10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR § 5a.4(b), he will maintain records of employment as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR § 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 *Submission of payrolls and related reports.*

a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the

^aStrike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$100,000 or less.

^bAs used in Sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike Sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under § 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under § 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 Disputes concerning wage rates and classifications of labor.

a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 Wage claims and adjustments. In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 Contract work hours and safety standards act—overtime compensation.

a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employ-

ment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this section.

2.11 Termination; debarment; subcontracts.

a. A breach of the provisions of the foregoing §§ 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR 5.6.

b. The Owner shall insert in any subcontracts Sections 2.6 (and with respect to § 2.6g (2), copies of 29 CFR 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 Disputes.

a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the resolution of such disputes shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any proceeding under this Section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This Section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 Interest of members, officers, or employees of public housing agency, members of local governing body, or other public officials. No member, officer, or employee of the Public Housing Agency ("PHA"), no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was acti-

vated, and no other public official of such locality or localities who exercises any functions of responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.14 Interest of member of or delegate to Congress. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.15 Nonassignability.

a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different developer from the one named in the preamble of this Agreement, except with the prior consent of the Government.

c. The Owner agrees that the approved developer has not made, and will not make, except with the prior consent of the Government, any assignment or transfer in any form of the developer's contract to construct the project, or of any part thereof, or any of the developer's interests therein.

d. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this section.

e. For the purpose of this section, a transfer of stock in the Owner or developer in whole or in part, by a party holding ten percent or more of the stock of said Owner or developer, or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or developer or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the project or the construction contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX II—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER OR PHA-OWNER PROJECT

PART I

This Housing Assistance Payments Contract ("Contract") is entered into by and between the United States of America acting through the Department of Housing and Urban Development ("Government"), and ----- ("Owner"), pursuant to the United States Housing Act of 1937 ("Act").

42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq.

The parties hereto agree as follows:

1.1 *Significant dates and other items; contents of contract.*

a. *Effective Date of Contract.* The effective date of this Contract is _____, 19____ [This date shall be no earlier than the date of approval by the Government.]

b. *Initial Term of Contract.* The initial term of this Contract (see Section 1.4a) shall be ____ years [not to exceed five years], beginning with the effective date of this Contract and ending _____, 19____.

c. *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see § 1.4a) shall be _____ terms of ____ year each [not to exceed five years each].

d. *Maximum Total Term of Contract.* The maximum total term of this Contract, including renewals (see Section 1.4a) shall be ____ years. [Insert 20, except in the case of (1) a project owned by, or financed by a loan or loan guarantee from, a State or local agency or (2) a mobile homes project. Under either of these exceptions, insert number as specifically authorized by the Government pursuant to 24 CFR § 1273.103(g), not to exceed 40 in the case of exception (1) or 20 in the case of exception (2).]

e. *Fiscal year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ [insert March 31, June 30, September 30, or December 31, as determined by the Government].

f. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.5a) is \$_____ per annum.

g. *Contents of contract.* This contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents").

Exhibit B: The Project Description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's warranties.*

a. *Legal capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of work.* The Owner warrants that the project as described in Exhibit B is in good and tenantable condition and that all work has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of the Contract.

1.3 *Families to be housed; government assistance.*

a. *Families to be housed.* The Contract Units are to be leased by the Owner to eligible lower-income families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *Government assistance.*

(1) The Government hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the Government upon receipt of funds from the Government for that purpose.

1.4 *Term of contract: Fiscal year.*

a. *Term of Contract.*

[Alternative provisions—incorporate alternative 1, 2, or 3, as applicable.]

Alternative 1—General:

The initial term of this Contract shall be as stated in section 1.1b. This Contract may be renewed, at the sole option of the Owner, for the number and length of additional terms stated in section 1.1c, provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in section 1.1d. Renewal shall be automatic unless the Owner notifies the Government, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage; *Provided, however,* that the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in section 1.1d, plus two years.

Alternative 2—For mobile homes project:

In the case of mobile homes, the initial term of this Contract for each mobile home shall be as stated in section 1.1b. This Contract shall be renewed, as may be mutually agreed upon by the Owner and the Government, with respect to any mobile home, for the number and length of additional terms as stated in section 1.1c, provided that the total Contract term for any mobile home, including renewals, shall not exceed the number of years stated in section 1.1d. Renewals shall become effective only if either party gives written notice, no later than 60 days prior to the expiration of the current term, of his desire to renew, and the other party concurs or fails to object before the expiration of the current term. If the project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the mobile homes in each stage; *Provided, however,* that the total Contract term for the mobile homes in all stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in section 1.1d, plus two years. For purposes of this paragraph a, the term "mobile home" means the original mobile home and any replacement(s), combined.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in section 1.1e; *Provided, however,* that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.5a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Maximum housing assistance commitment; project reserve.*

a. *Maximum housing assistance commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the Government and the Owner, the Government shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1f; *Provided, however,* that this amount shall be reduced commensurate with any reduction in the number of units under this Contract.

b. *Project Reserve.* A project account shall be established and maintained, in an amount as determined by the Government consistent with its responsibilities under section 8(c) (6) of the Act, out of amounts by which the maximum Contract commitment stated in paragraph a of this Section exceeds amounts paid under this Contract for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family incomes (see § 1.8). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government as a receipt in accordance with law.

1.6 *Housing assistance payments to owners.*

a. *General.*

(1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will pay the Owner the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The Owner shall be entitled to Contract Rents in accordance with the terms of this Contract. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income, Family composition, extent of exceptional medical or other unusual expenses, or by reason of adjustment by the Government of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with the Government-established schedules and criteria, and shall be effective as of the date stated in a notification of such change to the Family.

b. *Vacancies During Rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with section 1.3b of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the Public Housing Agency ("PHA") and other appropriate sources to refer eligible applicants, and advertising the availability of the units, and (3) has not rejected any eligible applicant, except for good cause acceptable to the Government.

c. *Vacancies After Rent-up.*

(1) If a Family vacates its unit (other than as a result of action by the Owner

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which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also § 1.9b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (1) immediately upon learning of the vacancy, has notified the Government of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner proposes to evict a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported by a certification that (i) he has given such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction is not in violation of the Lease or the Contract or any applicable law.

d. *Limitation on Payments for Vacant Units.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocations pursuant to Title I of the Housing and Community Development Act of 1974 or payments under section 1.9b of this Contract).

e. *Government Not Obligated for Family Rent.* The Government has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.9b of this Contract. The financial obligation of the Government is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. *Owner's Monthly Requests for Payments.*

(1) The Owner shall submit monthly requests to the Government for housing assistance payments. Each such request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit; and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling unit is in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed had been previously claimed or paid.

(3) If the Owner has received an excessive payment, the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that

whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

1.7 *Maintenance, operation and inspection.*

a. *Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the Government determines that the Owner is not meeting any of these obligations, the Government shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

b. *Inspection.*

(1) Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by the Government, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form.

(2) The Government shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as the Government may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The Government shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections.

c. *Units Not Decent, Safe, and Sanitary.* If the Government notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the Government may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the Government does not have other Section 8 funds for such purposes, the Government may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The Government shall promptly notify the Family of any such abatement.

e. *Overcrowded and Underoccupied Units.* If the Government determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suit-

able units or if no vacancy of a suitable unit occurs within a reasonable time, the Government will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 1.6c (1).

1.8 *Rent adjustments.*

a. *Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section up to the maximum total annual housing assistance payments committed under § 1.5a of this Contract. The provisions of this Contract are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project (reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. The Government will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

b. *Automatic Annual Adjustments.*

(1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special additional adjustments.* Special additional adjustments may be granted, when approved by the Government, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall limitation.* Notwithstanding any other provisions of this Contract, adjustments as provided in this Section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Government.

e. *Incorporation of rent adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit.

1.9 *Marketing and leasing of units.*

a. *Compliance with equal opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirma-

tive Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. Security and Utility Deposits.

(1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner must comply with all State and local laws regarding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

c. Eligibility, selection and admission of families.

(1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. In the initial renting of the Contract Units, the Owner shall lease at least 30 percent to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

(2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. Rent Redetermination after Adjustment in Allowance for Utilities and Other Services. In the event that the Owner is notified of a Government determination making an adjustment in the Allowance for Utilities and

Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of housing assistance payments.

e. Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Government requirements and shall maintain records and furnish such copies or other information as may be required by the Government.

f. Government Review; Incorrect Payments. In making housing assistance payments to Owners, the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.10 Termination of Tenancy. The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in section 1.6c.

1.11 Reduction of number of contract units for failure to lease to eligible families.

a. Twelve Months after Effective Date of Contract. If at any time, beginning six months after the effective date of this Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract Units leased or available for leasing by Families, the Government may on 30 days notice reduce the number of Contract Units to not less than the number of units under lease or available for leasing by Families, plus 10 percent of such number, if that number is 10 or more, rounded to the next highest number.

b. At End of Initial and Each Renewal Term. At the end of the initial term of the Contract and of each renewal term, the Government may, by notice to the Owner, reduce the number of Contract Units to not less than (1) the number of units under lease or available for leasing by Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

c. Restoration of units. Any reduction pursuant to paragraphs a or b of this Section shall not preclude subsequent restoration of Contract units if contract authority is available and if the Government determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract.

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Owner _____
By _____
(Official Title)
Date _____, 19____
United States of America
and Urban Development
By _____
(Official Title)
Date _____, 19____

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A-1.

Effective date. The effective date of this Contract is _____, 19____ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____
By _____
(Official Title)
Date _____, 19____
United States of America
Secretary of Housing
and Urban Development
By _____
(Official Title)
Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

Effective date. The effective date of this Contract is _____, 19____ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____
By _____
(Official Title)
Date _____, 19____
United States of America
Secretary of Housing
and Urban Development
By _____
(Official Title)
Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

Effective Date. The effective date of this Contract is _____, 19____ [Insert date which shall be no earlier than the date of execution by the Government.]

Owner _____
By _____
(Official Title)
Date _____, 19____
United States of America
Secretary of Housing and
Urban Development
By _____
(Official Title)
Date _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER OR PHA-OWNER PROJECT

PART II

2.1 Nondiscrimination in housing.

a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, § 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government and the said Department, either of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 Training, employment, and contracting opportunities for businesses and lower-income persons.¹

a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his

successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.3 *Cooperation in equal opportunity compliance reviews.* The Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean air act and federal water pollution control act.*² In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the Department of Housing and Urban Development field office director of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 Reports and access to premises and records.

a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the Government.

b. The Owner shall permit the Government or any of its duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests for housing assistance payments.

2.7 Default by the owner.

a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

² Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are \$100,000 or less.

¹ Strike this section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are \$500,000 or less.

b. Upon a determination by the Government that a default has occurred, the Government shall notify the Owner of the nature of the default, or the actions required to be taken on account of the default (including the curing of the default by the Owner, the abatement of housing assistance payments in whole or in part, where appropriate, or any combination of actions), and of the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the Government, the Government shall take appropriate actions to achieve compliance or to terminate the Contract in whole or in part.

c. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy available under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.8 DISPUTES.

a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement between the Department of Housing and Urban Development field office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the resolution of such disputes shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any proceeding under this Section, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his position.

b. This section does not preclude consideration of questions of law in connection with the decision rendered under paragraph a of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.9 *Interest of members, officers, or employees of PHA, members of local governing body or other public officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.10 *Interest of member of or delegate to congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.11 Nonassignability.

a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner

is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees to notify the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract or the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX III

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT NO. —

This Annual Contributions Contract (ACC) is entered into on — day of —, 19 — (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.), which Act as amended to the date of this ACC is herein called the "Act" and the Department of Housing and Urban Development Act (42 U.S.C. 3531), and — (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or Projects.* The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in Section 2.1) pursuant to Section 8 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with Owners (as defined in Section 2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2 *Part I and Part II of this Annual Contributions Contract.*

(a) Certain provisions of this ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3 *Fiscal Year.* Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending — of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

0.4 *Schedule of Projects.* Attached to this Master Section 8 ACC, as Attachment A, is a list identifying each ACC Part I and ACC Part I amendment by project number, date, and ACC List number and date.

PHA —
By —
Date —
The Government
By —
Date —

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—ANNUAL CONTRIBUTIONS CONTRACT

PART I

NEW CONSTRUCTION PROJECT NO. —

Effective Date —

[Date of execution by the Government of this ACC Part I]

ACC List Number and Date —

1.1 *The project.* The PHA proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to newly constructed dwelling units pursuant to an Agreement to Enter into Housing Assistance Payments Contract ("Agreement") executed prior to the commencement of construction. The numbers and sizes of units will be as follows:

Size of Unit Number of Units

The PHA shall enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above. The PHA shall not enter into any Agreement or Contract or take any other action which will result in a claim for a total Annual Contributions in respect to the Project in excess of the maximum amounts stated in § 1.4(a).

1.2 *Authorization of actions by PHA.* In order to carry out the Project, the PHA is authorized to (a) enter into an Agreement, (b) enter into a Contract, (c) make housing assistance payments on behalf of Families, and (d) take all other necessary actions all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PHA nor the Government shall assume any obligation beyond that provided in the Government-approved Agreement and Contract.

1.3 Terms of ACC and contract.

(a) This ACC shall remain in effect so long as the Contract is in effect but in no event shall the term of the ACC exceed — years from the beginning of the first Fiscal Year. [Insert number specified in the first sentence of paragraph (b) of this Section plus two years.]

(b) [Alternative provisions—incorporate alternative 1 or 2, as applicable.]

Alternative 1—General

The total Contract term for any unit, including all renewals, shall not exceed — years. [Insert 20 unless the project is owned by, or financed by, a loan or loan guarantee from, a State or local agency. In the latter case, insert number as specifically authorized by the Government, but in no event more

than 40.] If the Project is accepted in stages, the total Contract term for the units in all stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (b), plus 2 years.

Alternative 2—For mobile homes project

The total Contract term for any mobile home unit, including all renewals, shall not exceed ____ years. [Insert number as specifically authorized by the Government, but in no event more than 20.] If the Project is accepted in stages, the total Contract term for the mobile home units in all stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (b), plus 2 years. For purposes of this paragraph (b), the term "mobile home" means the original mobile home and any replacement(s), combined.

1.4. Annual contributions.

(a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PHA, the Government shall not be obligated to make any Annual Contributions or any other payment in excess of:

APPENDIX III—U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT #_____

This Annual Contributions Contract (ACC) is entered into on ____ day of _____, 19____, (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.), which Act as amended to the date of this ACC is herein called the "Act" and the Department of Housing and Urban Development Act (42 U.S.C. 3531), and _____ (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or projects.* The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in §2.1) pursuant to Section 8 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with Owners (as defined in §2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2 Part I and Part II of this annual contributions contract.

(a) Certain provisions of this ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(1) \$_____ for housing assistance payments under the Contract; or

(2) \$_____ for other Project Expenditures; or

(3) a total of \$_____ for all Project Expenditures in respect to the Project.

Provided, however, that these amounts shall be reduced commensurate with any reduction in the number of units under the Contract or pursuant to any other provision of this ACC.

(b) Subject to the maximum dollar limitations in paragraph (a) of this Section, the Government shall pay Annual Contributions to the PHA in respect to the Project in an amount equal to the sum of the following (subject to reduction by the amount of any Project Receipts other than Annual Contributions, which Receipts shall be available for Project Expenditures):

(1) The amount of housing assistance payments payable during the Fiscal Year (see §1.5) by the PHA pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(3) The allowance, in the amount approved by the Government, for the regular costs of administration.

(c) Subject to the maximum amount stated in paragraph (a) (3) of this Section, the Annual Contribution for any Fiscal Year may include such amount as the Government may determine to be necessary to assure that the lower-income character of the Project will be maintained, which amount shall be credited to an account maintained by the PHA or the Government as determined by the Government. To the extent funds are available in said account, the Annual Contribution for any Fiscal Year may exceed the maximum amounts stated in paragraph (a) of this Section by such amount, if any, as may be required for increases reflected in the estimates of required Annual Contributions applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11 below. Any amount remaining in said account after payment of the last Annual Contribution with respect to the Project shall be applied by the Government in accordance with law.

(d) The Government will make periodic payments on account of the Annual Contributions upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contract as such provisions apply respectively to (a) units under lease by Families and (b) units not under lease by Families; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5. *Fiscal Year.* The Fiscal Year for the Project shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution

in Section 1.4(a) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6. Periodic adjustment of contract rents.

(a) The Contract may provide for periodic adjustments in the Contract rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments up to the total annual housing assistance payments committed under Section 1.4(a) (1) of this ACC.

(b) The provisions of Section 1.4(c) of this ACC are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract rents or decreases in Family incomes. The Government shall take such additional steps authorized by Section 8(c) (6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

1.7. *Affirmative fair housing marketing regulation.* The PHA shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation (subject to any exceptions therein) including the submission for Government approval of an Affirmative Fair Housing Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to said Regulation.

1.8. *Expeditions carrying out of project.* The PHA shall proceed expeditiously with the Project. If the PHA fails to proceed expeditiously, and no Agreement with the Owner has yet been entered into, the Government by notice to the PHA, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the PHA or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement.

1.9. *Responsibility for administration of contract.* The PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following provisions shall be included in the Contract:

(1) The Government shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract;

(2) In the event the Government determines that the Owner is in default with respect to any or all of his obligations, the Government shall have the right to take direct action (as if the Government were the party to the Contract primarily responsible for its administration) to enforce any or all available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the Contract, and termination of the Contract in whole or in part; and

(3) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA.

PHA _____
By _____
Date _____
The Government
By _____
Date _____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—TERMS AND CONDITIONS CONSTITUTING PART II OF AN ANNUAL CONTRIBUTIONS CONTRACT BETWEEN PUBLIC HOUSING AGENCY AND THE UNITED STATES OF AMERICA

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2.1. Definitions.

(a) "Families" means Lower-Income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.

(b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age or are under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined under regulations of the Secretary to be a person essential to their care or well being.

(c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(d) "Lower-Income Families" means Families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(e) "Very Low-Income Families" means Families whose incomes do not exceed 50 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.

(g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.

(h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts, if any, accruing to the PHA from, out of, or in connection with such Project.

(j) "Project Expenditures" with respect to each Project means all costs allowable under Section 1.4(b), Part I of this ACC with respect to such Project.

(k) "Substantial Default" means the occurrence of any of the events listed in Section 2.17.

2.2. Lower-income housing use; compliance with act and regulations. The PHA shall use the Annual Contributions solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3. Eligibility and amount of housing assistance payments.

(a) The PHA, shall comply with the income limits established by the Government and the requirements of the Govern-

ment pursuant to section 8(c) (7) of the Act concerning the leasing of at least 30 percent of assisted units to Very Low-Income Families.

(b) The PHA, shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amounts of housing assistance payments made on behalf of Families.

(c) The PHA shall make or cause to be made periodic reexaminations of the income, composition, and extent of exceptional medical or other unusual expenses of Families for whom housing assistance payments are being made for the purpose of confirming or adjusting, in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.

(d) Prior to the approval of eligibility of a Family, and thereafter on the date established for each reexamination of the status of such Family, the PHA shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for a determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4. Inspections.

(a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling units and related facilities in Decent, Safe, and Sanitary Condition.

(b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families and shall make or cause to be made subsequent inspections at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that the agreed-to services are being furnished.

2.5. Nondiscrimination in housing.

(a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by [contractor or other].

(b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968,

and any rules and regulations issued pursuant thereto.

(c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use of occupancy thereof, nor deny to any Family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

2.6. Equal employment opportunity.

(a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b)(1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA setting forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and

will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the contractor's non-compliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(G) The contractor will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (G) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(3) The PHA further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.7. Training, employment, and contracting opportunities for businesses and lower income persons.

(a) The project assisted under this ACC is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

(b) Notwithstanding any other provisions of this ACC the PHA shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the

Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by Section 3; and incorporation of the "Section 3 clause" specified by § 135.20(b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

(c) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR 135.135.

(d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.8. Cooperation in equal opportunity compliance reviews. The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.9. Clean air act and Federal water pollution control act. The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and Executive Order 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.10. Labor standards. The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.11. Estimates of required annual contributions. The PHA shall from time to time submit to the Government estimates of required annual contributions at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

2.12. Insurance and fidelity bond coverage. For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project, the PHA shall carry adequate (1) comprehensive general liability insurance, (2) workmen's compensation coverage (statutory or voluntary), (3) automobile

liability insurance against property damage and bodily injury (owned and non-owned), and (4) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

2.13. Books of account and records; reports. (a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.

(b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA, except as authorized or approved by the Government.

(c) The PHA shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

REPORTS, ACCESS TO PREMISES AND RECORDS

(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.

(2) The Owner shall permit the PHA and the Government or any of their duly authorized representatives, to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests to the PHA for housing assistance payments.

(f) Audits required by the Government will be performed or paid for by the Government.

2.14. General depositary agreement and general fund.

(a) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depositary Agreement," in form prescribed by the Government, with one or more banks (each of which shall be, and continue to be, a member of the Federal Deposit Insurance Corporation) selected as depositary by the PHA. Immediately upon the execution of any General Depositary Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require. No such General Depositary Agreement shall be terminated except after 30 days notice to the Government.

(b) All monies received by or held for account of the PHA in connection with the Projects shall constitute the General Fund.

(c) The PHA shall, except as otherwise provided in this ACC, deposit promptly with such bank or banks, under the terms of the General Depositary Agreement, all monies constituting the General Fund.

(d) The PHA may withdraw monies from the General Fund only for (1) the payment of Project Expenditures, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA

stating in proper detail the purpose for which such withdrawal is made.

(e) If the PHA (1) in the determination of the Government, is in Substantial Default, or (2) makes or has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to require any bank or other depository which holds any monies of the General Fund, to refuse to permit any withdrawals of such monies; Provided, however, that upon the curing of such Default the Government shall promptly rescind such requirement.

2.15. *Pooling of funds under special conditions and revolving fund.* (a) The PHA may deposit under the terms of the General Depositary Agreement monies received or held by the PHA in connection with any other housing project developed or operated by the PHA pursuant to the provisions of any contract for annual contributions, administration, or lease between the PHA and the Government.

(b) The PHA may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositories of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the PHA operates other projects or enterprises in which the Government has no financial interest it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depositary Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositories of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depositary Agreement.

(e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16. *Default.*

(a) *Failure or Inability of PHA to Comply with Agreement.* In the event the Government determines that the PHA is in default as provided in the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceedings, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government, may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the Project. In such case, the Government will assume the PHA's rights and obligations under the Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

(b) *Failure or Inability of PHA to Comply*

with Contract. In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder. In such case, the Government will assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

(c) *Other Defaults by the PHA.* If the PHA defaults in the observance or performance of the provisions of Section 2.4; fails to comply with its obligations under any duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.6, 2.7 or 2.8; defaults in the performance or observance of any term, covenant, or condition of this ACC other than the defaults enumerated in this paragraph, and if such defaults have not been remedied within a reasonable time, not to exceed 30 days, after the Government has notified the PHA thereof; or fails to comply with the applicable provisions of the Act and all regulations issued pursuant thereto; the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests in and to the project, or such part thereof as the Government may specify, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC until reassigned to the PHA.

(d) *Return of Rights and Obligations to PHA.* All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16 will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(e) *Rights of Owner.* The provisions of this Section 2.16 are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment. To enforce the performance of this provision the Owner and such assignees, as well as the PHA, shall have the right to proceed against the Government by suit at law or in equity.

2.17. *Remedies Not Exclusive and Non-Waivers of Remedies.* Any remedy provided for herein shall not be exclusive or preclude the Owner, PHA and/or the Government from exercising any other remedy available under this ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies available to such parties. Failure on the part of any such party to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy, nor operate to deprive the party of the right thereafter to take any remedial

action for the same or any subsequent default.

2.18. *Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.* (a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the PHA, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection; Provided, however, that any such present member, officer, or employee of the PHA shall not participate in any action by the PHA relating to such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

(c) The provisions of the foregoing subsections (a) and (b) of this section 2, shall not be applicable to the General Depositary Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19. *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise therefrom.

APPENDIX IV—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER/PHA PROJECT

PART I

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the ----- ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and ----- ("Owner").

Whereas, the Owner proposes to complete a housing project consisting of improvements and land as described in the approved Final Proposal; and

Whereas, the Owner and the PHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible lower-income families ("Families") to occupy units in said project; and

Whereas, the PHA has entered into an Annual Contributions Contract dated _____, 19____, with the United States of America acting through the Department of Housing and Urban Development ("Government") with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments; and

Whereas, the Owner is also the developer, or, if the developer is other than the Owner, the developer's name is _____;

Now therefore, the parties hereto agree as follows:

1.1 Significant dates: Contents of agreement.

a. *Time for Completion of Project.* The time for completion of the project (see Section 1.2a) is _____ calendar days after the effective date of this Agreement.

b. *Date for Commencement of Work.* The date for commencement of work (see Section 1.2b) is _____, 19____.

c. *Contents of Agreement.* This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal including, among other things, the architect's certification, the Affirmative Fair Housing Marketing Plan (if required), evidence of management capability, and management program (if required);

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The Annual Contributions Contract;

Exhibit D: The schedule of completion in stages, if applicable;

Exhibit E: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. Nothing contained in this Agreement shall create or affect any relationship between the PHA and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 Schedule of completion.

a. *Time for Completion.* The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit D which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. *Timely Performance of Work.* The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the PHA reserves the right, subject to Government approval, to rescind this Agreement or take other appropriate action. The Owner shall report to the PHA the date work was commenced and shall thereafter furnish the PHA with periodic progress reports (quarterly unless more frequent reporting is required by the PHA).

c. *Delays.* In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the PHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increases in the rents set forth in Exhibit

B ("Contract Rents") may be granted on account of any such delays.

1.3 Construction period.

a. *Changes.* The Owner shall submit for PHA and Government approval any changes from Exhibit A which will materially reduce or alter his obligations or any changes which alter the design or materially reduce the quality or amenities of the project. Approval of such changes may be conditioned on a reduction of Contract Rents. If such changes are made without prior approval by the PHA and the Government, the Owner may be required to reduce the Contract Rents or remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications.

b. *Commencement of marketing.* The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the estimated completion date. The Owner shall notify the PHA of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the PHA of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.7b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

c. *Management certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that there has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the PHA and the Government in accordance with paragraph a of this Section.

d. *Labor Standards Certification.* Prior to acceptance of the project by the Government, the Owner shall certify in writing that he has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or the PHA or the Government, the Owner shall be required to place a sufficient amount in escrow as determined by the Government to assure payment thereof.

1.4 Project completion.

a. *Conformance to Final Proposal.* The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

b. *Notification of Completion.* The Owner shall notify the Government, with a copy to the PHA, when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.

c. *Evidence of Completion.* Completion of the project shall be evidenced by furnishing the Government with all of the following:

- (1) A set of as-built drawings.
- (2) A certificate of occupancy and/or other official approvals necessary for occupancy.
- (3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

¹Strike this paragraph if the project involves fewer than nine Contract units.

(i) All work has been completed in accordance with the requirements of this Agreement;

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(4) A certification by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards for professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:

(i) All work has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);

(ii) The project is in good and tenantable condition; and

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified).

(iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

d. Inspection.

(1) Within ten working days of the receipt of the Owner's notification of project completion, the Government representative, accompanied by a PHA representative, shall inspect the project and review the evidence of completion listed in paragraph c of this Section. Such inspection shall be sufficient to enable the Government inspector to state in his inspection report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of such inspection, the project has been completed in accordance with the Agreement and, in particular, that there are no observable conditions inconsistent with the certifications of the Owner or the design architect or the inspecting architect. As promptly as possible, the Government shall notify the Owner in writing as to whether or not the project has been completed in an acceptable manner.

(2) In the event the Owner disputes the Government's determinations, he may submit the controversy to third-party arbitration, at his expense, provided that the arbitration is advisory only.

e. *Acceptance of Project.* If the Government determines that the project is not acceptable under paragraph d(1) of this Section, the following shall apply:

(1) If the defects or deficiencies are only punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete such items within a reasonable time to the satisfaction of the PHA and the Government, the PHA may, upon 30 days notice, as directed by the Government, terminate the Contract or exercise the PHA's other rights under the Contract.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, but the Government determines that (i) a certificate of occupancy and/or other official approvals necessary for occupancy has been issued, (ii) the project is in good and tenantable condition, and (iii) the project has been constructed in accordance with the applicable

zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials, the project may be accepted after the Owner corrects the defects or deficiencies or the project may be accepted subject to a specified reduction of the Contract Rents as determined by the Government.

(3) If the Government determines that the project is not acceptable under paragraphs e(1) or e(2) of this Section, the Government shall determine: (i) whether the defects or deficiencies can be corrected and (ii) whether a reduction in Contract Rents will be required as a condition to acceptance of the project. If it is determined that the defects or deficiencies can be corrected, the Owner shall be notified of the Government's determinations under (i) and (ii) of this subparagraph, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted. Prior to authorizing execution of the Contract, the Government will verify that appropriate corrective action has been taken.

f. *Completion in Stages.* If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 *Execution of housing assistance payments contract.*

a. *Time of Execution.* Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed by the Owner and the PHA and shall then be approved by the Government.

b. *Completion in Stages.* If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the PHA and approved by the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. *Unleased Units at Time of Execution.* At the time of execution of the Contract, the PHA shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units.

The PHA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished to the Government.

d. *Contract Rents.* The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except that in no case may the initial Contract Rents for units in projects financed with mortgages insured under the National Housing Act exceed the rents approved by the Government in connection with the mortgage insurance for such projects.

e. *No Changes in Contract.* Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and

conditions of the Contract other than in accordance with Section 1.3a and paragraph d of this Section.

1.6 *Government assurance to owner.*

a. The approval of this Agreement by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract. The Government and the PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder for housing assistance payments except as authorized in the ACC and the Contract.

b. The ACC states that the ACC provisions quoted below in this paragraph are made for the benefit of the Owner, or his assignees who will have been specifically approved by the Government prior to such assignment, and that to enforce the performance of these provisions, the Owner and such assignees shall have the right to proceed against the Government by suit at law or in equity. Upon the determination by the Government that a default by the PHA has occurred, the following provisions of the ACC (which are hereby made a part of this Agreement), shall be applicable:

"(a) *Failure or inability of PHA to comply with agreement.* In the event the Government determines that the PHA is in default of its obligation under the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder as to the project. In such case, the Government will assume the PHA's rights and obligations under the Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

"(d) *Return of Rights and Obligations to PHA.* All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.17 will be returned as constituted at the time of such return (1) when the Government is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements or (2) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner."

1.7 *Authority of the PHA.* The PHA warrants that it is a "public housing agency" as defined in section 3(6) of the Act and that it is in fact and in law authorized to execute this Agreement.

Effective date. This Agreement shall be effective as of the date of execution by the Government.

In witness whereof, the parties hereto have executed this Agreement in four original counterparts.

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully make or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

APPROVED:
United States of
America Secretary
of Housing and
Urban Develop-
ment

By _____
(Official Title)

Date _____, 19__

PHA _____
By _____
(Official Title)

Date _____, 19__

OWNER _____

By _____

(Official Title)

Date _____, 19__

SECTION 8 HOUSING ASSISTANCE PAYMENTS
PROGRAM—AGREEMENT TO ENTER INTO HOUSING
ASSISTANCE PAYMENTS CONTRACT—NEW
CONSTRUCTION—PRIVATE-OWNER/FHA PROJ-
ECT

PART II

2.10 *Training, employment, and contracting opportunities for businesses and lower-income persons.*²

a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 FR 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by § 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

"A. The work to be performed under this Agreement is on a project assisted under a program dividing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and

² Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$500,000 or less.

Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

"E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 Equal employment opportunity.¹

a. The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without re-

gard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with

¹ As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 Cooperation in equal opportunity compliance reviews. The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 Flood insurance. If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 Clean air act and federal water pollution control act.² In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 FR 11099, pursuant to the Clean Air Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to § 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

² Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$100,000 or less.

2.6 Prevailing wage rates.*

a. Attached hereto and incorporated herein as Exhibit D is a schedule of minimum rates of wages applicable to this Agreement.

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established.

*As used in Sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike Sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (b) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (c) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of \$10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR Section 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the

performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(vi) He will supply one copy of the written notices required in accordance with 29 CFR Section 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 Submittal of payrolls and related reports.

a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 Disputes concerning wage rates and classifications of labor.

a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The deci-

sion of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 *Wage claims and adjustments.* In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

2.10 *Contract work hours and safety standards act—overtime compensation.*

a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 *Termination; debarment; subcontracts.*

a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR Section 5.6.

b. The Owner shall insert in any subcontracts Sections 2.6 (and with respect to Section 2.6g(2)), copies of 29 CFR Sections 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these Sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts has may in turn be made.

2.12 *Disputes.*

a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 *Interest of members, officers, or employees of PHA, members of local governing body, or other public officials.* No member, officer or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.14 *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise therefrom.

2.15 *Nonassignability.*

a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

b. The Owner agrees that he will not change to a different developer from the one named in the preamble of this Agreement, except with the prior consent of the PHA and the Government.

c. The Owner agrees that the approved developer has not made, and will not make, except with the prior consent of the PHA and the Government, any assignment or transfer in any form of the developer's contract to construct the project, or of any part thereof, or any of the developer's interests therein.

d. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

e. For the purpose of this Section, a transfer of stock in the Owner or developer in whole or in part, by a party holding ten percent or more of the stock of said Owner or developer, or a transfer by more than one stockholder or the owner of 10 percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or developer or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Agreement, the project or the construction contract. With respect to this provision, the Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

APPENDIX V—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER/PHA PROJECT

PART I

This Housing Assistance Payments Contract ("Contract") is entered into by and between the _____ ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and _____ ("Owner"), and approved by the United States of America acting through the Department of Housing and Urban Development ("Government"), pursuant to the Act and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq.

The parties hereto agree as follows:

1.1 Significant dates and other items; contents of contract. a. *Effective Date of Contract.* The effective date of this Contract is _____, 19____. [This date shall be no earlier than the date of approval by the Government.]

b. *Initial Term of Contract.* The initial term of this Contract (see Section 1.4a) shall be _____ years [not to exceed five years], beginning with the effective date of this Contract and ending _____, 19____.

c. *Number and Length of Optional Additional Terms.* The number and length of optional additional terms (see Section 1.4a) shall be _____ terms of _____ year each [not to exceed five years each].

d. *Maximum Total Term of Contract.* The maximum total term of this Contract, including renewals (see Section 1.4a) shall be _____ years. [Insert 20, except in the case of (1) a project owned by, or financed by a loan or loan guarantee from, a State or local agency or (2) a mobile homes project. Under either of these exceptions, insert number as specifically authorized by the Government pursuant to 24 CFR Section 1273.103(g), not to exceed 40 in the case of exception (1) or 20 in the case of exception (2).]

e. *Fiscal Year.* The ending date of each Fiscal Year (see Section 1.4b) shall be _____ [Insert March 31, June 30, September 30, or December 31, as determined by the Government].

f. *Annual Contributions Contract.* The Annual Contributions Contract applicable to this Contract ("ACC") (see Section 1.5a) is the ACC dated _____ with respect to Project No. _____.

g. *Maximum Housing Assistance Commitment.* The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.6a) is \$_____ per annum. [Enter amount specified in the ACC for housing assistance payments.]

h. *Contents of Contract.* This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B: The Project Description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits; [Specify additional exhibits, if any. If none, insert "None."]

This Contract, including said exhibits, comprises the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein.

1.2 *Owner's warranties. a. Legal Capacity.* The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. *Completion of Work.* The Owner warrants that the project as described in Exhibit B is in good and tenable condition and that all work has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of this Contract.

1.3 *Families to be housed; PHA assistance. a. Families To Be Housed.* The Contract Units are to be leased by the Owner to eligible lower-income families ("Families") for use and occupancy by such Families solely as private dwellings.

b. *PHA Assistance.* (1) The PHA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the PHA upon receipt of funds from the PHA for that purpose.

1.4 *Term of contract; fiscal year. a. Term of Contract.*

[Alternative provisions—incorporate alternative 1, 2, or 3, as applicable.]

Alternative 1—General: The initial term of this Contract shall be as stated in Section 1.1b. This Contract may be renewed, at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c, provided that the total Contract term for any unit, including renewals, shall not exceed the number of years stated in Section 1.1d. Renewal shall be automatic unless the Owner notifies the PHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew. If the project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the units in each stage: *Provided, however,* That the total Contract term for the units in all the stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract terms stated in Section 1.1d, plus two years.

Alternative 2—For mobile homes project: In the case of mobile homes, the initial term of this Contract for each mobile home shall be as stated in Section 1.1b. This Contract shall be renewed, as may be mutually agreed

upon by the Owner and the PHA with the approval of the Government, with respect to any mobile home, for the number and length of additional terms as stated in Section 1.1c, provided that the total Contract term for any mobile home, including renewals, shall not exceed the number of years stated in Section 1.1d. Renewals shall become effective only if either party gives written notice, no later than 60 days prior to the expiration of the current term, of his desire to renew, and the other party concurs or fails to object before the expiration of the current term. If the project is accepted in stages, the dates for the initial term and renewal terms shall be separately related to the mobile homes in each stage: *Provided, however,* That the total Contract term for the mobile homes in all the stages, counting from the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1d, plus two years. For purposes of this paragraph a, the term "mobile home" means the original mobile home and any replacement(s), combined.

b. *Fiscal Year.* The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1c; *Provided, however,* that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.6a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 *Annual contributions contract. a. Identification of Annual Contributions Contract.* The PHA has entered into an Annual Contributions Contract with the Government as identified in Section 1.1f, under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act, for the purpose of making housing assistance payments. A copy of the ACC shall be provided upon request.

b. *PHA Pledge of Certain ACC Payments.* The PHA hereby pledges to the payment of housing assistance payments pursuant to this Contract the portion of annual contributions payable under the ACC for such housing assistance payments. The PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of such annual contributions, except as authorized in the ACC and this Contract.

c. *Government Approval of Housing Assistance Payments Contract.* The approval of this Contract by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract.

1.6 *Maximum housing assistance commitment; project reserve. a. Maximum Housing Assistance Commitment.* Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the PHA and the Owner, the PHA shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per annum stated in Section 1.1g; *Provided, however,* That this amount shall be reduced commensurate with any reduction in the number of units under this Contract.

b. *Project Reserve.* As provided in the ACC, a project account shall be established and maintained, in an amount as determined by the Government consistent with its

responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum annual ACC commitment exceeds amounts paid under the ACC for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family incomes (see Section 1.9). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.

1.7 *Housing assistance payments to owners. a. General.* (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will pay the Owner the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.

(2) The Owner shall be entitled to Contract Rents in accordance with the terms of this Contract. The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family income, Family composition, extent of exceptional medical or other unusual expenses, or by reason of adjustment by the Government of any applicable Allowance for Utilities and Other Services. Any such change shall be determined in accordance with the Government-established schedules and criteria, and shall be effective as of the date stated in a notification of such change to the Family.

b. *Vacancies During Rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.3b of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to the PHA.

c. *Vacancies After Rent-Up.* (1) If a Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.10b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.

(2) If the Owner proposes to evict a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported

by a certification that (1) he has given such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days within which to present its objections to the Owner in writing or in person and (2) the proposed eviction is not in violation of the Lease or the Contract or any applicable law.

d. *Limitation on Payments for Vacant Units.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocations pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.10b of this Contract).

e. *PHA Not Obligated for Family Rent.* The PHA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.10b of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. *Owner's Monthly Requests for Payments.* (1) The Owner shall submit monthly requests to the PHA or as directed by the PHA for housing assistance payments. Each such request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit; and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (1) the dwelling unit is in Decent, Safe, and Sanitary condition, (2) all the other facts and data on which the request for funds is based are true and correct, (3) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (4) none of the amount claimed has been previously claimed or paid.

(3) If the Owner has received an excessive payment, the PHA or the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

1.8 *Maintenance, operation and inspection.* a. *Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the PHA determines that the Owner is not meeting any of these obligations, the PHA shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

b. *Inspection.* (1) Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on the form prescribed by the Gov-

ernment, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed form.

(2) The PHA shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy of any unit) as the PHA may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA shall take into account complaints by occupants and any other information coming to its attention in scheduled inspections.

c. *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA does not have other Section 8 funds for such purposes, the PHA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.

d. *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The PHA shall promptly notify the Family of any such abatement.

e. *Overcrowded and Underoccupied Units.* If the PHA determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of overcrowding, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the PHA will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.7c(1).

1.9 *Rent adjustments.* a. *Funding of Adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section up to the maximum total annual housing assistance payments committed under Section 1.6a of this Contract. The provisions of the ACC which are referred to in Section 1.6b of this Contract are designed (by providing for maximum total annual commitments in excess of the amounts required at the time of the initial rental of dwelling units and by setting aside such excess amounts in a project reserve) to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family incomes. The ACC further provides that the Government will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section) "the reservation of annual

contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

b. *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.

c. *Special Additional Adjustments.* Special additional adjustments may be granted, when approved by the Government, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.

d. *Overall Limitation.* Notwithstanding any other provisions of this Contract, adjustments as provided in this Section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Government.

e. *Incorporation of Rent Adjustment.* Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit.

1.10 *Marketing and leasing of units.*

a. *Compliance with Equal Opportunity.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.

b. *Security and Utility Deposits.* (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates the unit, the Owner may utilize the deposit as reimbursement for any unpaid rent or damage caused by the Family. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. If a Family vacates the unit owing no rent and causing no damage to the unit or if the amount of unpaid rent and/or damage is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include such interest. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then

in occupancy, plus any accrued interest. The Owner must comply with all State and local laws regarding interest payments on security deposits.

(3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

c. *Eligibility, Selection and Admission of Families.* (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. In the initial renting of the Contract Units, the Owner shall lease at least 30 percent to Very Low-Income Families (determine in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.

(2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.

(3) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. *Rent Redetermination after Adjustment in Allowance for Utilities and Other Services.* In the event that the Owner is notified of a Government determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. *Processing of Applications and Complaints.* The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Government requirements and shall maintain records and furnish such copies or other information as may be required by the Government.

f. *Review; Incorrect Payments.* In making housing assistance payments to Owners, the PHA or the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the PHA or the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

g. *Termination of tenancy.* The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in Section 1.7c.

1.12 Reduction of number of contract units for failure to lease to eligible families.

a. *Twelve Months after Effective Date of Contract.* If at any time, beginning six months after the effective date of this Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract Units leased or available for leasing by Families, the PHA, with Government approval, may on 30 days notice reduce the number of Contract Units to not less than the number of units under lease or available for leasing by Families, plus 10 percent of such number, if that number is 10 or more, rounded to the next highest number.

b. *At End of Initial and Each Renewal Term.* At the end of the initial term of the Contract and of each renewal term, the PHA, with Government approval, may, by notice to the Owner, reduce the number of Contract Units to not less than (1) the number of units under lease or available for leasing by Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number, if the number is 10 or more, rounded to the next highest number.

c. *Restoration of Units.* Any reduction pursuant to paragraphs a or b of this Section shall not preclude subsequent restoration of Contract units if contract authority is available and if the Government determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract.

1.13. *Responsibility for administration of Contract.* The PHA is primarily responsible for administration of the Contract. However, if the PHA is the lender, the following shall apply:

(a) The Government shall have the right to make independent audits, reviews, and determinations as to compliance by the Owner with any or all of his obligations under the Contract.

(b) In the event the Government determines that the Owner is in default with respect to any or all of his obligations, the Government shall have the right to take direct action (as if the Government were the party to the Contract primarily responsible for its administration) to enforce any or all available remedies, including, but not limited to, abatement of housing assistance payments, collection of payments previously made in violation of the contract, and termination of the Contract in whole or in part.

(c) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA.

(d) The Owner hereby expressly agrees to recognize the rights of the Government in the event it takes any action under this Section in the same manner and to the same extent as if the action were taken by the PHA.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

APPROVED: Owner _____
United States of America Secretary of Housing and Urban Development By _____
(Official Title) Date _____, 19____
Date _____, 19____

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 1

This Contract is hereby executed with respect to the units described in Exhibit A-1.

Effective date. The effective date of this Contract with respect to the units described in Exhibit A-1 is _____, 19____ [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: Owner _____
United States of America Secretary of Housing and Urban Development By _____
(Official Title) Date _____, 19____
Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

Effective Date. The effective date of this Contract with respect to the units described in Exhibit A-2 is _____, 19____ [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: Owner _____
United States of America Secretary of Housing and Urban Development By _____
(Official Title) Date _____, 19____
Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

Effective Date. The effective date of this Contract with respect to the units described in Exhibit A-3 is _____, 19____ [Insert date which shall be no earlier than the date of approval by the Government.]

Approved: Owner _____
United States of America Secretary of Housing and Urban Development By _____
(Official Title) Date _____, 19____
Date _____, 19____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING ASSISTANCE PAYMENTS CONTRACT—NEW CONSTRUCTION—PRIVATE-OWNER PHA PROJECT

PART II

2.1 *Nondiscrimination in housing.* a. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government, of the said Department, and the PHA any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 *Training, employment, and contracting opportunities for businesses and lower-income persons.* a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his

successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS"

"A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Contract will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

"E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with re-

spect to his own employment practices when he participates in federally assisted work.

2.3 *Cooperation in equal opportunity compliance reviews.* The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 *Flood insurance.* If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 *Clean Air Act and Federal Water Pollution Control Act.* In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every non-exempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 *Reports and access to premises and records.* a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA or the Government.

b. The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the monthly requests for housing assistance payments.

2.7 *Default by the owner.* a. A default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or

¹ Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are \$500,000 or less.

² Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are \$100,000 or less.

all of his obligations under this Contract or under any Lease.

b. Upon a determination by the PHA that a default has occurred, the PHA, with approval of the Government, shall notify the Owner of the nature of the default of the actions required to be taken on account of the default (including the curing of the default by the Owner, the abatement of housing assistance payments in whole or in part, where appropriate, or any combination of actions), and of the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall take appropriate actions as directed or approved by the Government, to achieve compliance or to terminate the Contract in whole or in part.

2.8 *Default by the PHA.* The ACC states that the ACC provisions quoted in this Section are made with, and for the benefit of, the Owner or his assignees who will have been specifically approved by the Government prior to such assignment, and that to enforce the performance of these provisions, the Owner and such assignees shall have the right to proceed against the Government by suit at law or in equity. Upon the determination by the Government that a default by the PHA has occurred, the following provisions of the ACC (which is hereby made a part of this Contract), shall be applicable:

"(b) *Failure or Inability of PHA to Comply with Contract.* In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after reasonable notice to the PHA, determine that the occurrence of any such event, if the Owner is not in default, constitutes a Substantial Default hereunder. In such case, the Government will assume the PHA's rights and obligations under such Contract, and the Government shall, for the duration of such Contract, continue to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract, shall perform the obligations and enforce the rights of the PHA, and shall exercise such other powers as the Government may have to cure the Default.

"(d) *Return of Rights and Obligations to PHA.* All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.17 will be returned as constituted at the time of such return (1) when the Government is satisfied that all defaults have

been cured and that the Project will thereafter be administered in accordance with all applicable requirements or (2) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner."

2.9 *Remedies not exclusive and non-waiver of remedies.* The availability of any remedy under this Contract shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.10 *Disputes.* a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the field office director.

c. This Section does not preclude consideration of questions of law in connection with the decisions rendered under paragraphs a and b of this Section; *Provided, however,* That nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.11 *Interest of members, officers, or employees of PHA, members of local governing body or other public officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or re-

sponsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.12 *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

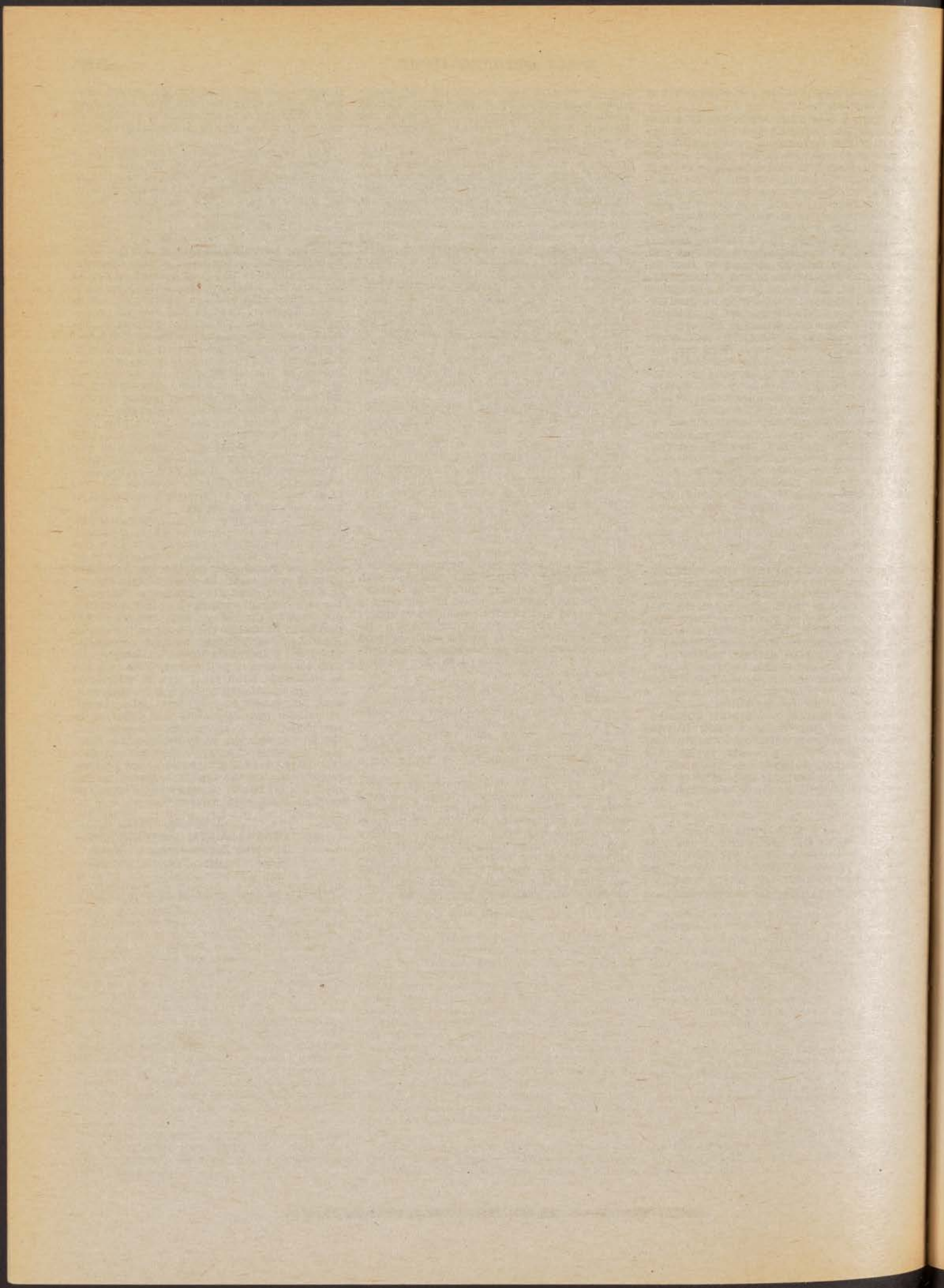
2.13 *Nonassignability.* a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; *Provided, however,* That in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government. An assignment by the Owner to a limited partnership of which the Owner is the sole general partner shall not be considered an assignment herein.

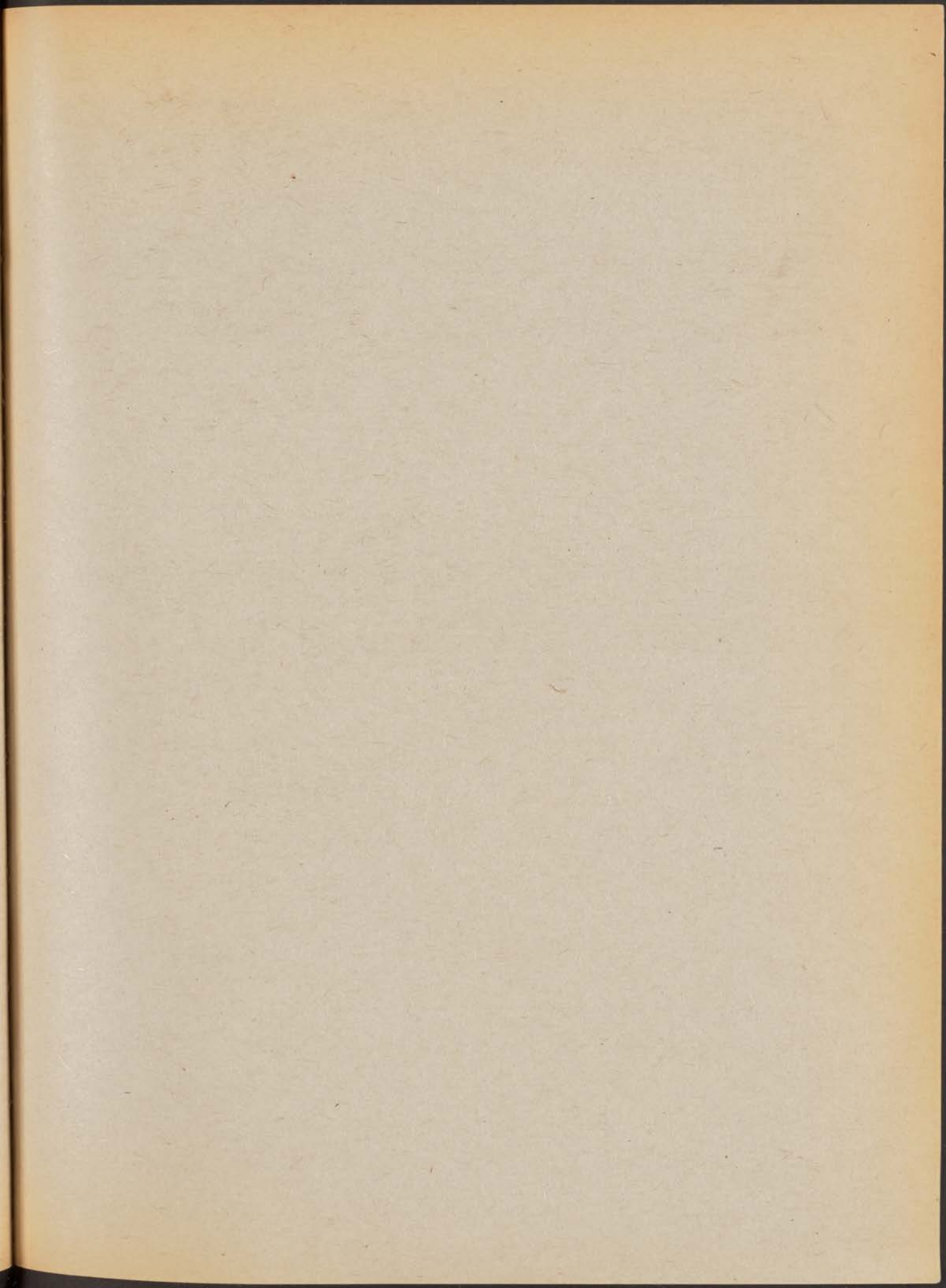
b. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto, except in the case of an assignment as security as provided in paragraph a of this Section.

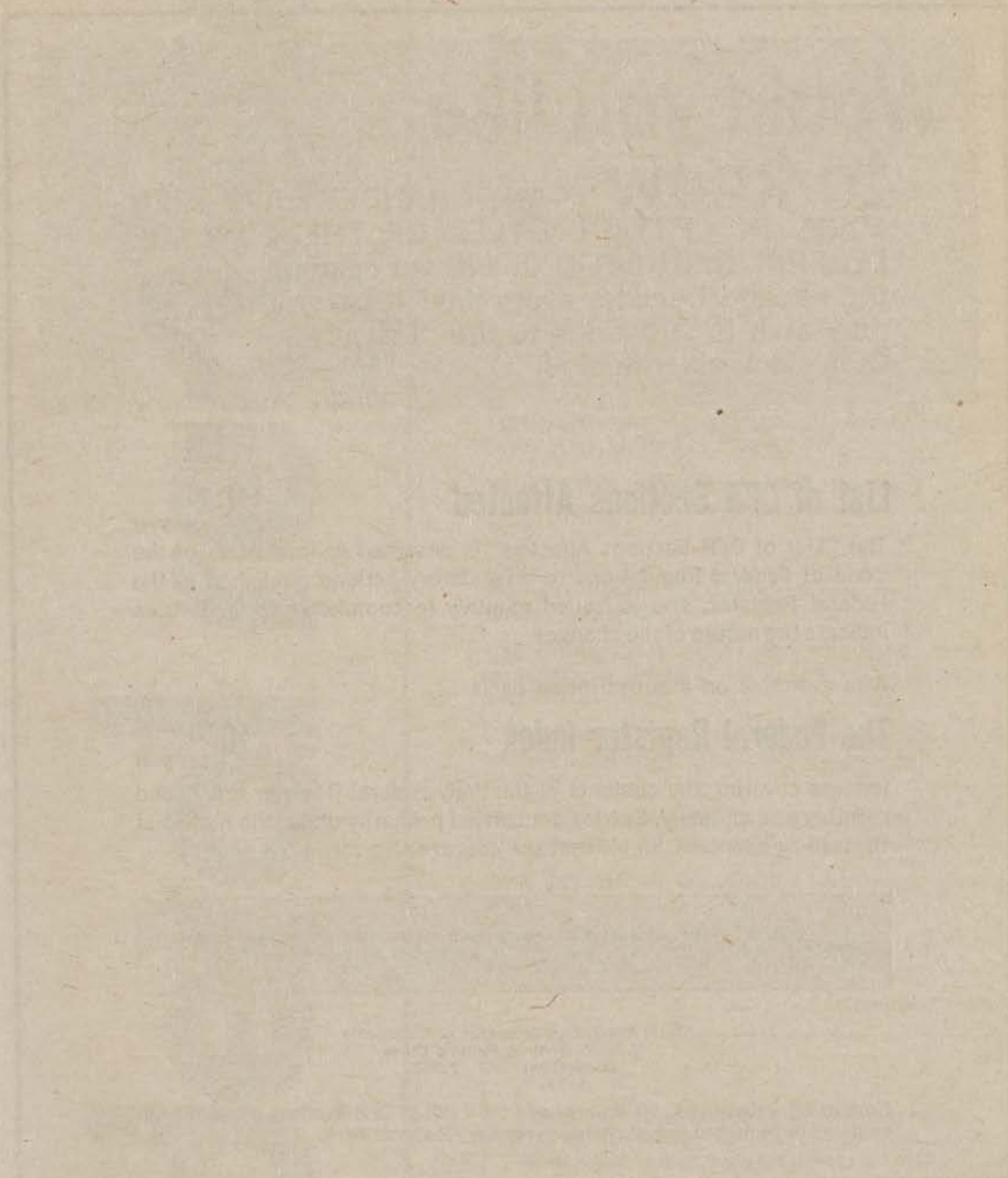
c. For the purpose of this Section, a transfer of stock in the Owner in whole or in part, by a party holding ten percent or more of the stock of said Owner, or a transfer by more than one stockholder or the Owner of ten percent or more of the stock of said Owner, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment, conveyance, or transfer with respect to this Contract on the project. With respect to this provision, the Owner and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the existing stockholders of the Owner to agree to this provision on behalf of said stockholders and to bind them with respect thereto.

DAVID M. DEWILDE,
Acting Assistant Secretary for
Housing Production and Mortgage Credit—FHA Commissioner.

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